

***United States Court of Appeals
for the
District of Columbia Circuit***



**TRANSCRIPT OF
RECORD**

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United States Court of Appeals for the District of Columbia

JANUARY TERM, 1939.

No. 7375

SPECIAL CALENDAR.

444

POTOMAC ELECTRIC POWER COMPANY, A CORPORATION, APPELLANT,

vs.

FRANK A. CARDILLO, DEPUTY COMMISSIONER,
UNITED STATES EMPLOYEES' COMPENSATION COMMISSION, DISTRICT OF COLUMBIA
COMPENSATION DISTRICT, AND RAYMOND W.
KICKLIGHTER, INTERVENER.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR
THE DISTRICT OF COLUMBIA.

FILED MARCH 27, 1939

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United States Court of Appeals for the District of Columbia

a District Court of the United States for the
District of Columbia

Civil Action No. 623

POTOMAC ELECTRIC POWER COMPANY, a corporation, *Plaintiff*,

vs.

FRANK A. CARDILLO, Deputy Commissioner, United States
Employees' Compensation Commission, District of
Columbia Compensation District, *Defendant*.

UNITED STATES OF AMERICA,
District of Columbia, ss:

BE IT REMEMBERED, that in the District Court of the
United States for the District of Columbia, at the
City of Washington, in said District, at the times
hereinafter mentioned, the following papers were
filed and proceedings had, in the above-entitled
cause, to wit:

1 *Complaint for an Injunction*

Filed November 9 1938

In the District Court of the United States for the District
of Columbia.

Civil Action No. 623

POTOMAC ELECTRIC POWER COMPANY, a corporation, 929 E
St. N. W., *Plaintiff*,

vs.

FRANK A. CARDILLO, Deputy Commissioner, United States
Employees' Compensation Commission, District of
Columbia Compensation District, McGill Bldg., 908 G
Street, N. W., *Defendant*.

1.

This complaint is brought under the provisions of the
Longshoremen's and Harbor Worker's Compensation Act

for the purpose of reviewing the award made October 14, 1938 by the Defendant as Deputy Commissioner, District of Columbia Compensation District.

2.

The Plaintiff is a corporation organized and existing by virtue of the laws of the District of Columbia, and files this complaint in its own right.

3.

The Defendant, Frank A. Cardillo, is a citizen of the United States, and resident of the District of Columbia, and is sued as Deputy Commissioner, United States Employees' Compensation Commission for the District of Columbia.

4.

The claimant, Raymond W. Kicklighter, on August 18, 1937 filed a claim for compensation, alleging that on May 24, 1935 while employed as a compressor operator for the Plaintiff, he sustained injuries when an air hose came loose at the connection with the compressor machine when a certain valve was turned on, and that the metal end of the hose struck him on the right forehead, as a result of which he received a laceration over the right eye and a slight blow on the head causing a swelling the size of a chestnut, and as a result of which he went to and remained in the Emergency Hospital two days and the following week was permitted, at his request, to return to work. He continued his regular employment until September, 1935, when he resigned, and then secured employment with the W. P. A. as a linesman. He continued this employment until May, 1936, when he was re-employed by Plaintiff and assigned to operate the compressor machine until August 7, 1936. There is no evidence in the record that he ever resigned because of any physical disability. The claimant, according to the record, had complained of various things prior to, as well as subsequent to, date of accident. The evidence adduced at the hearing clearly shows that the claimant was complaining of headache and dizziness prior to the injury.

5.

The Plaintiff contended before the Commissioner that the claimant was barred in his claim for compensation by the Statute of Limitations, since the provisions of Sec. 13 (e) of District of Columbia Workmen's Compensation Act particularly require claim to be made within one year. In spite of this contention, Defendant granted the award under Order of October 14, 1938, which Order is attached hereto, marked Plaintiff's Exhibit A and the Plaintiff prays that the same may be read and taken as a part of this complaint.

6.

The Plaintiff further contends that the evidence adduced at the hearing clearly shows that the said Kicklighter was complaining of headache and dizziness prior to the injury. The Findings of the Commissioner as to the headaches, dizziness and symptoms are based only upon statements of claimant and in disregard of evidence that Claimant tried frequently to get on sick report and attempted to mislead army doctors; and in disregard of testimony of fellow employees that Claimant was not a normal person and now appeared no differently physically than when he worked with them prior to the accident. The Defendant disregarded the testimony of physicians that claim of the claimant is fictitious. Claimant's medical testimony before the Commissioner was based upon his own statements, and consequently opinions were largely based thereon and it was admitted by claimant's physicians that if these statements of claimant were false their opinions would be otherwise. The Defendant's findings completely disregarded the testimony that the symptoms now complained of were complained of prior to the injury, and competent medical evidence to the effect that these symptoms were not such as would result from the type of injury sustained by claimant. The Plaintiff attaches hereto a complete transcript of the record of proceedings before the Defendant, marked Plaintiff's Exhibit B. and prays that the same may be read and taken as a part of this complaint.

7.

Upon consideration of the evidence, the award herein should be set aside on two grounds:

1. The claim was not presented within the time allowed by law.

2. The findings of the Commissioner are not based upon substantial evidence.

The uncontradicted testimony of disinterested witnesses clearly shows that Claimant, Kicklighter, is not temporarily totally disabled, and is not entitled to compensation claimed. Nevertheless, the Defendant on October 14, 1938, made and filed his compensation order in and by which he

4 made a finding of fact that as a result of the injury sustained, the said Kicklighter was wholly disabled from November 16, 1936 (although the accident occurred on May 24, 1935) and entitled to compensation for temporary total disability from said November 16, 1936 at the rate of \$12.00 per week; that such temporary total disability is continuing; that the accrued compensation to August 23, 1938 is \$1107.43; that nothing has been paid to claimant, and that Plaintiff shall pay the above compensation as ordered.

The Plaintiff respectfully submits that the said compensation order and award is not in accordance with, but is contrary to law, in that said Defendant awarded compensation for an injury not compensable and upon a claim filed after the Statute of Limitations had run. The Plaintiff further says that irreparable loss and damage will result to it unless the Court stays the payments under said award and compensation order aforesaid pending final decision of this Court; for the reason that Plaintiff is informed, and believes, and so believing, avers that the party to whom payment under the award is required to be made is not financially responsible, and that the Plaintiff could not recover back from said party payments made in the event this court should set aside said award:

WHEREFORE, the premises considered, the Plaintiff prays:

1. That the United States Writ of Subpoena issue against the Defendant, requiring him, by a day certain to be named therein, to appear herein and answer the exigencies of this complaint.

2. That an injunction issue pendente lite and permanently, restraining the enforcement of said award and requiring the Defendant to vacate and set the same aside.

3. That the payment of said award be stayed pending final decision herein.

4. For such other and further relief as the nature of the case may require and to this Honorable Court seems
5 meet and proper.

POTOMAC ELECTRIC POWER
COMPANY

By WM McCLELLAN
President.

Subscribed and sworn to before me this 9th day of November, 1938.

(Seal) GLADYS B FREEMAN
Notary Public, D. C.

BOWEN AND KELLY

By S. R. BOWEN

R. E. LEE GOFF
Attorneys for Plaintiff.

6 *Copy*

Exhibit "A"

Filed January 20 1939

United States Employees' Compensation Commission District of Columbia Compensation District

Compensation Order

Award of Compensation

Case No. 26-827

In the matter of the claim for compensation under the District of Columbia Workmen's Compensation Act

RAYMOND W. KICKLIGHTER, *Claimant*

vs.

POTOMAC ELECTRIC POWER COMPANY, *Employer and Self-Insurer*

Such investigation in respect to the above-entitled claim having been made as is considered necessary, and hearings

having been duly held in conformity with law, the Deputy Commissioner makes the following

Findings of Fact

That on the 24th day of May, 1935, the claimant above named was in the employ of the employer above named, whose address is 10th and E Streets, Northwest, Washington, District of Columbia; that the employer was subject to the provisions of an Act of Congress approved May 17, 1928, entitled "An Act to provide compensation for disability or death resulting from injury to employees in certain employments in the District of Columbia, and for other purposes"; that the liability of the employer for compensation under the said Act was protected by the said employer's qualifying as a self-insurer; that on the said day the claimant herein, while performing service for the employer as a compressor operator at 18th and R Streets, Northwest, Washington, District of Columbia, sustained personal injury resulting in his disability when the air hose connection became loose, causing the metal end of the hose to strike him on the right side of the forehead, as a result of which he suffered swelling, laceration of the forehead, and cerebral concussion; that the claimant was immediately

7 taken to Emergency Hospital where he was treated for concussion, the treatment including two sutures for the laceration of the forehead; that written notice of injury was not given within thirty days, but that the employer had knowledge of the injury and has not been prejudiced by the lack of such written notice; that the employer furnished medical treatment, etc., in accordance with the provisions of Section 7 (a) of the said Act; that the average annual earnings of the claimant herein at the time of his injury amounted to the sum of \$936.00; that the claimant remained in the hospital two days and resumed his regular employment one week following the date of injury; that he continued at his regular employment until September of 1935, but that during the said period he suffered occasional headaches and dizziness without loss of time from work; that in September, 1935, the claimant resigned and the following month secured employment with the Works Progress Administration as a linesman; that during the period of such employment also he suffered from headaches and dizziness;

that in May, 1936, he was re-employed by the Potomac Electric Power Company, and that he was again assigned to operate the compressor machine; that his attacks of headaches and dizziness became more severe but that he did not lose any time from work; that he did not get along very well with his work and that he was assigned to laborer's work and was finally discharged on August 7, 1936; that the employer hereafter refused to give him employment and failed to furnish him with the additional medical treatment which he requested; that two months later the claimant again obtained employment with the Works Progress Administration; that he was given work as a laborer; that he was so employed for several weeks until on November 16, 1936, on which date he suffered a severe attack of headache and dizziness and collapsed on the job; that he quit work and took his family to Savannah, Georgia, where he
8 attempted to work in a factory; that he was unable to continue at such work due to the severity of the headaches and dizzy spells; that the claimant thereupon returned to Washington, District of Columbia, and applied for relief; that in May of 1937, the claimant was referred to the Emergency Hospital by the Public Welfare Bureau because his symptoms had become unbearable; that treatment for headaches, dizziness, and nervousness was furnished him at the said institution; that in May or June, 1937, following examination by the attending psychiatrist, the claimant was informed that he was suffering from a brain condition caused by the injury sustained on May 24, 1935; that on August 18, 1937, he filed a claim for compensation; that he has been receiving medical treatment to date; that as a result of the injury sustained on May 24, 1935, the claimant suffered brain injury which caused deterioration of the brain substance; that prior to May 24, 1935, the claimant was active, ambitious, industrious, conscientious, and a responsible individual of average intelligence; that his school progress was normal; that at the age of sixteen, after two years in high school, he dropped his studies to help his father on the farm; that his industrial progress thereafter was normal; that he served in the United States Army as a cook for several years, advancing from a fifth grade rating to a second grade rating; that the nature of the work which he performed for the employer herein, operating a

compressor and digging rig and having control of the levers, required a fair degree of intelligence and responsibility; that up to the time of the injury he got along well and his work was satisfactory; that the only manifestations following the injury were occasional headaches and dizziness which were not sufficient to prevent his continuing at work for more than year; that the condition resulting from the

injury was progressive in nature and as time went
9 on the symptoms grew gradually worse; that he was undergoing a definite change due to the injury sustained; that he became dull, careless, worried, nervous, irritable, depressed and confused, and that at times he suffered lapses of memory and delusions of persecution; that all of the said symptoms resulted from the injury; that the claimant became aware of the nature and cause of his condition approximately in May of 1937, after the symptoms had become severe and unbearable, and after he had secured medical treatment and advice; that the injury sustained on May 24, 1935, was slowly progressive and became compensable on or about November 16, 1936; that beginning the latter date he was incapacitated for performing his work; that the claim filed on August 18, 1937, was timely filed and within one year from the time that the injury became disabling and compensable and also within one year from the time he was aware of the nature and cause of his disability; that as the result of the injury the claimant is unable to perform any work requiring mental emotion or physical exertion; that he can perform simple work, but only for a limited period of time and under close supervision; that he is slow, unreliable, and has difficulty in concentration; that the employer has not given him a special type of work which his condition would permit him to perform; that such special employment is unavailable elsewhere; that as the result of the injury sustained the claimant was wholly disabled from November 16, 1936, and he is entitled to compensation for temporary total disability at the rate of \$12.00 per week; that such temporary total disability is continuing; that the accrued compensation for temporary total disability to and including August 23, 1938, is \$1107.43; that nothing has been paid to the claimant as compensation.

Upon the foregoing findings of fact, the Deputy Commissioner makes the following

10

Award

That the employer, Potomac Electric Power Company, a self-insurer, shall pay to the claimant compensation as follows: 92-2/7 weeks at the rate of \$12.00 per week, from November 16, 1936, to August 23, 1938, inclusive, amounting to \$1107.43, and shall continue payments thereafter in bi-weekly installments at the rate of \$12.00 per week, during the continuance of such temporary total disability.

A fee for legal services rendered in connection with this claim is approved in the amount of \$200.00 in favor of Attorney S. Preston Smith, same to be a lien upon and deducted from the payment of this award.

Given under my hand at Washington, D. C. this fourteenth day of October, 1938.

(s) FRANK A. CARDILLO

Deputy Commissioner

District of Columbia Compensation District

Proof of Service

I hereby certify that a copy of the foregoing compensation order was sent by registered mail to the claimant, the employer, the attorney for the claimant and the attorney for the respondent, at the last-known address of each as follows:

Name	Address
Raymond W. Kicklighter,	913 First St. N. W., Washington, D. C.
Potomac Electric Power Company,	10th and E Street, N.W. Washington, D. C.
S. Preston Smith, Attorney,	Evans Building, Washington, D. C.
S. R. Bowen, Attorney,	Potomac Electric Power Bldg., Washington, D. C.

Mailed October 14, 1938.

(s) FRANK A. CARDILLO

Deputy Commissioner

10 POTOMAC ELEC. POWER CO. VS. F. A. CARDILLO ET AL.

11 Endorsed: Filed Jan 20 1939 Charles E. Stewart,
Clerk

United States Employees' Compensation Commission
Washington, D. C.

Exhibit "B"

Case No. 26-827

RAYMOND W. KICKLIGHTER, *Claimant*

vs.

POTOMAC ELECTRIC POWER COMPANY, *Employer*

SELF-INSURER. *Insurance Carrier*

Transcript of Testimony at Hearing

Before the Deputy Commissioner for the District of
Columbia

May 24, 1938.

H. S. Middlemiss

Official Shorthand Reporter

Columbian Building, Washington, D. C.

Telephone NATIONAL 2369

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13 United States Employees' Compensation
Commission for the District of Columbia
Before Honorable Frank A. Cardillo,
Deputy Commissioner for the District of Columbia
No. 26-827

RAYMOND W. KICKLIGHTER, *Claimant*,

vs.

POTOMAC ELECTRIC POWER COMPANY, *Employer*,
SELF-INSURER.

Transcript of Testimony at Hearing

* * *

Pursuant to notice, this matter was heard before Honorable Frank A. Cardillo, Deputy Commissioner, United States Employees' Compensation Commission, at Washington, D. C., on the 24th day of May, 1938, at 1 o'clock p. m.

APPEARANCES:

S. Preston Smith, Esquire, in behalf of the claimant;
S. R. Bowen, Esquire, in behalf of the respondent.

14 Mr. Smith: I don't know, your Honor, what the procedure is with respect to witnesses.

The Deputy Commissioner: Leave the witnesses outside with the exception of the doctors. I would like to have them hear the testimony.

Mr. Smith: The records of the hospital were subpoenaed, but I don't believe that they have arrived yet.

The Deputy Commissioner: We will introduce them when Hospital are here. They were brought here this morning in error. They were produced this morning, so the Emergency Hospital records are here.

Mr. Smith: I would like to have those records put in this record. That is, only the hospital records, in order that we may refer to them, the hospital records of March 24 or March 26.

Mr. Bowen: What does the record show?

Mr. Smith: That Mr. Kicklighter was taken there after he was injured, and that he was treated there for the particular injury that he claims is the result of an accident, and that he claims has caused his present condition.

Mr. Bowen: Do you mean just to show that he was there?

Mr. Smith: To show that he was treated there and what he was treated for.

Mr. Bowen: If I can't see the records—

The Deputy Commissioner (interposing): They are available here.

15 Mr. Bowen: I don't know why he is offering them, but I would like to see them (examining a file of papers).

Mr. Smith: I haven't looked at them myself.

The Deputy Commissioner: We will introduce them when the time comes.

This hearing is upon the application of the claimant, Raymond W. Kicklighter, who has filed claim for compensation, alleging that on May 24, 1935, while employed as a compressor operator for the Potomac Electric Power Company, he sustained injuries when an air hose came loose at the connection with the compressor machine when a certain valve was turned on, and that the metal end of the hose struck him on the right forehead, as a result of which he received a laceration of the forehead over the right eye and a concussion, as a result of which he has been disabled.

The claim is controverted by the employer, and I am going to ask Mr. Bowen to state for the record the ground on which the claim is controverted.

Mr. Bowen: Mr. Commissioner, the answer of the Potomac Electric Power Company is filed with the Commission and shows that the employer contends that the statute of limitations applies regarding this claim for compensation, and that the claim for compensation was not filed within one year from the date of the accident, as required in Section 13 (e) of the District of Columbia Workmen's
16 Compensation Act.

I assume, Mr. Commissioner, that the other matters answered in that answer are also a part of the record.

The Deputy Commissioner: I would like to state for the record that that particular answer is not made, and I will ask you to state on what further ground the claim is controverted.

Mr. Bowen: In addition to what I have already stated, Mr. Commissioner, the employer admits that the claimant sustained an injury on or about the date set forth in the

claim, but that the injury was not the injury now complained of. By that it is denied that due notice of the injury was given to the employer. At that time the claimant was temporarily disabled for the period stated as from May 24, 1935, to June 1, 1935, a period for which he was paid for time lost.

The Deputy Commissioner: With respect to your first contention that the claimant hasn't filed within the period of one year, I will state for the record that there is a claim dated August 18, 1937, in the name of Raymond W. Kicklighter, which was received by this office on August 18, 1937.

What is your statement with respect to that, Mr. Smith, with respect to the filing of the claim?

Mr. Smith: I say that the claim in this case, though he was injured on May 24, 1935, the full facts of his injury were not known by him or by anyone else, for that matter, until a long time afterwards, he having gone back to work

for the company, and he did work for the company
17 for several months, and for that matter, he resigned and worked at other employment and then returned, all the time suffering from something that he didn't know the cause of. It was thought for a time that it was due to his eyes. In 1937, after the last time he had worked for the Potomac Electric Company, he was out of the city and he came back to Washington. Upon arrival in Washington, he was put on relief at the suggestion of the relief workers, who knew the circumstances and conditions.

He was sent to Emergency Hospital, to the clinic there, and Doctor Silverman treated him and referred him to Doctor Shugrue for x-rays of the brain, which I understand were all negative.

Doctor Shugrue thought that there should be another consultation with Doctor Cohen, and Doctor Cohen and Doctor Shugrue continued to treat the man, and it became apparent from their treatment of him that he was suffering from a mental injury, or a change in personality, and according to them, that was the direct result of this injury.

Then it was in 1937 that this man knew for the first time that he had a claim that was compensable.

The Deputy Commissioner: It is your contention that the disability began in 1937?

Mr. Smith: It is my contention that it began in 1937, yes.

18 The Deputy Commissioner: It is your contention that a claim had been filed by Mr. Kicklighter within the prescribed period?

Mr. Smith: Yes, your Honor.

The Deputy Commissioner: All right, you may proceed.

Thereupon **Raymond W. Kicklighter** the claimant herein, was called as a witness for and in his own behalf, and being then and there duly sworn by the Deputy Commissioner, assumed the witness stand and, upon examination, testified as follows:

Direct Examination

By Mr. Smith:

Q. You are Raymond W. Kicklighter? A. Yes.

Q. You are the claimant in this case? A. Yes.

Q. Directing your attention to the—Let me ask you this: When did you begin to work for the Potomac Electric Power Company, if you know? A. In July, 1933.

Q. 1933? A. Yes.

Q. How long did you work for the Potomac Electric Power Company; I mean generally; I mean how many years altogether from time to time? A. About 3 years.

19 Q. Do you remember the date of the last time that you worked for them? A. It was the 2nd or 3rd of August, 1937.

Q. Are you sure of that? A. Yes.

Q. Was it August 7, 1936?

Mr. Bowen: I think the witness should answer that question.

The Deputy Commissioner: If there is any reason for disagreement, of course, the claimant should answer the question, but if there is no disagreement, we can save time this way.

The Witness: I think it was—I was off for 3 days, and I went to work, and in 3 days I was discharged, I was discharged on the 7th of August.

The Deputy Commissioner: August 7, 1936.

By Mr. Smith:

Q. Now, Mr. Kicklighter, you say you started to work for them in July, 1933? A. Yes, sir.

Q. Did there come a time when you resigned? A. Yes, sir.

Q. Do you know when that was?

Mr. Bowen: Talk louder.

20 The Deputy Commissioner: Speak up.

The Witness: In November, I believe.

By Mr. Smith:

Q. I don't want to confuse you, Mr. Kicklighter; just take your time and do the best you can on this. The first time that you resigned was when? A. In February.

Q. Of what year? A. 1934.

Q. Do you remember why you stopped at that time? Why you resigned? A. My wife was sick.

The Deputy Commissioner: What?

The Witness: My wife was sick.

By Mr. Smith:

Q. When were you married, Mr. Kicklighter? A. January 17, 1933.

The Deputy Commissioner: Mr. Kicklighter, if you can, speak up a little louder so that everyone can hear you.

The Witness: January 17, 1933.

By Mr. Smith:

Q. Now, did you resign because she was ill in February, 1934? A. Yes.

Q. What did you do when you resigned at that time? A.

21 She was advised to get a vacation, and we spent 6 weeks in Jacksonville, Florida.

Q. Did you return to the city of Washington? A. Yes, sir.

Q. Did you subsequently return to work for the Pepco? A. Yes.

Q. Do you recall the date? A. In May, I believe it was.

Q. In the same year? A. Yes, sir.

Mr. Bowen: Will you fix that date, please, so that we will know?

By Mr. Smith:

Q. What year? A. 1934.

Q. Now, at this time I ask you what kind of work you did when you first started to work for them? A. Laboring work; pick and shovel work.

Q. How long did you work at that? A. Up until I resigned the first time, after I went back to work again.

Q. That was in May, 1934? A. Yes, sir.

Q. What kind of work did you do then? A. General work, pick and shovel work, laying pipe.

22 Q. They started you in laying pipe lines? A. Yes, sir.

Q. Did you do any other kind of work? Was there any change in your duties? A. Yes, sir, they put me on a compressor.

Q. What was the nature of your work there? A. Digging manholes.

Q. Did you ever operate a truck? A. Yes, sir.

Q. Now, did you subsequently resign again? A. Yes, sir.

Q. Do you recall when that was? A. That was in November, I believe it was.

Q. What year? A. 1934.

Q. 1934? A. Yes.

Q. Why did you resign that time? A. My sister died.

Q. Do you know the date that you resigned that time? Do you know the day of the month? If you don't know, say so. A. I don't know.

Q. Now, you say that your sister died? A. Yes.

Q. Where was she? A. In Blackshear, Georgia.

23 Q. Did you go there at that time? A. Yes, sir.

Q. Did you then return to Washington? A. Yes, sir.

Q. Did you return to work for the Pepco? A. Yes, sir.

Q. Did you intend to return to Pepco to work when you resigned? A. Yes.

Q. Why didn't you ask for leave? A. I had to get my money and I had to sign some papers.

The Deputy Commissioner: When you say Pepco, I presume you mean the Potomac Electric Power Company?

Mr. Smith: Yes, and if it is all right, I will continue to say it that way. It is easier to say it that way.

By Mr. Smith:

Q. Now, when you returned in January after your sister's funeral, what kind of work did you do then? A. Operating the same machine.

Mr. Bowen: Does he mean, Mr. Smith, the same machine that he used in January?

Mr. Smith: January, 1935.

By Mr. Smith:

Q. I show you this statement (indicating) and ask you if it is correct, to the best of your knowledge.

24 Mr. Bowen: I think the witness should testify—

Mr. Smith (interposing): I am only trying to satisfy you, Mr. Bowen.

Mr. Bowen: I only asked you what year it was.

The Deputy Commissioner: Put your question in the form of a statement, if you possibly can.

By Mr. Smith:

Q. Mr. Kicklighter, referring to the time your sister died, will you give us that date, if you remember? A. I don't know.

Q. Do you know the month or the year? A. I think it was November 13; I believe it was.

Q. Do you know what year? A. 1934.

Q. When you returned to work in January— A. (Interposing) January 2, 1935.

Q. Then you were away a little over a month? A. Yes, sir.

Q. Now, will you tell us, as near as you can remember, the duties of a compressor operator? Just describe briefly what a compressor machine is. A. The dispatcher tells us what machine to go to. The dispatcher would tell us where we were going to and on what job and on what street, and we would get to the job and go to the foreman. The
25 foreman would tell us where he wanted us to work, or what he wanted us to do, then we would go ahead and work.

Q. Were you ever given blueprints? A. Yes.

Q. Did you have any men working under you? A. Yes, sir.

Q. Were you responsible for those men? A. Yes, sir.

Q. Now, this machine, this rigger, describe of what that consisted. A. It was a truck with an air compressor motor built on to the truck to operate the compressed air for the guns and the hoist, and things like that.

Q. What was this hoist? What did that do? A. That was to dig manholes or anything like that, any heavy work. It had a big piece on it that you could drop down in the hole, then this piece, this sort of a bucket, was closed up, then it was raised back, and it would bring the dirt up with it, and you could put the dirt wherever you wanted to put it. Whether you wanted to put it on a truck or on the side of the street, or wherever you were digging a hole.

Q. Did you have to take an examination or anything before you could operate this rigger? A. Yes, sir.

26 Q. Have you had any special schooling as an engineer in the operation of this machine? A. Yes, sir.

Q. What was that? A. Mr. MacIntosh was our instructor, and whenever it would be raining, and we were not working outside, he would take us into the day room in the building and he would give us instructions in things like that.

Q. All right. Directing your attention to May 24, 1935, were you operating a rigger on that day? A. Yes, sir.

Q. Where was that? A. Eighteenth and R Street.

Q. Who were the men working with you, if you remember? A. Johnny Evans, O'Connor, and Carter—no, Johnny Evans wasn't there. I had two men with me.

The Deputy Commissioner: Speak just a little louder, please.

By Mr. Smith:

Q. Now, were there any trucks working on that job? A. Yes, sir.

Q. Who was operating the trucks? Do you know? A. I don't know their names.

Q. Who was the foreman on this job? A. Mr. Ault.

27 Q. Did the foreman come around while you were working on the job? A. No, sir, he didn't. Earl Francis, the assistant foreman, came around. He had to be on that job.

Q. Were you injured on that day? A. Yes, sir.

Q. Tell us about what time of day it was. A. It was around about 2:30 or 3 o'clock, I guess.

Q. Tell us, as best you can, just what happened. A. I wanted to get the hole finished so I could barricade it up that afternoon. We had been working pretty hard on that,

and I got off the machine, and a colored fellow in the hole told me to turn the air off for their gun, and I turned the air off, and that was all I knew.

Q. Had you turned the air on one gun? A. I had turned the air on one gun and then on the other one.

Q. What was the next thing that you knew? A. I was in the hospital at Emergency Hospital.

Q. How long did you stay in the hospital? A. About 2 days, I guess.

Q. Where were you injured? A. Here (indicating) and here (indicating).

The Deputy Commissioner: Indicating the forehead on the right side and the back of the head.

28 The Witness: Yes, sir.

By Mr. Smith:

Q. What was the nature of that injury? Was it a bump on the head, a cut, or what? A. It was a bump here (indicating), and it was a cut here (indicating).

Q. Do you know the name of the doctor or the doctors that treated you there? A. No, sir, I don't.

Q. Can you tell us what the doctors did to you? A. No, sir, I could not.

Q. You were discharged 2 days later? A. Yes, sir.

Q. Did you later go back to work? A. Yes, sir.

Q. Do you know what date that was? A. No, sir, I don't know the date.

Q. Do you know how many days it was before you went back to work? A. Yes, it was about 8—7 or 8 days—it was on the 31st.

Q. What kind of work did you go back to doing? A. On the machine; on the same machine.

Q. On the same machine. Now, did there come a time when you again resigned? A. Yes, sir.

29 Q. Do you know when that was? A. September, I believe it was.

Q. What year? A. 1935.

Q. Up to that time did you have any difficulty with your work? A. Some, yes, sir.

Q. What kind of difficulty did you have? What do you mean by that? A. I just had headaches, and I went back.

The Deputy Commissioner: What?

The Witness: I backed my machine into somebody's private machine, and I didn't want the company to know that. I wanted to pay for that out of my own pocket, but the foreman bawled me out about that. He said that they had people in the office to take care of that. I made out an accident report, and that was all that I heard about that."

By Mr. Smith:

Q. What was the name of that foreman? A. Mr. Ault.

Q. Mr. Ault? A. Yes, sir.

Q. Well, now, can you tell us the reason for your
30 resigning in September, 1935? A. I fell out one evening on the job, just before knocking off time.

The Deputy Commissioner: What?

The Witness: I fell out one evening on the job just before knocking off time.

By Mr. Smith:

Q. What do you mean? A. I just fell over on the machine, and that is all I know about it. Afterwards they said that I was too hot, and the fellows laughed at me, and they said that the berries got me, and that is why I resigned.

Q. What do you mean by the expression, "berries got me"? A. That the heat gets you, or something like that. You just can't take it.

Q. Did you ever go back to work for Pepco after that? A. Yes, sir.

Q. Do you know when? Can you tell us when? A. April or May of 1936.

Q. Do you know definitely what month? A. No, sir, I don't.

Q. Now, I want to ask you what you did from September, 1935, until April or May, 1937, while you were not working for the Pepco Company. What did you do during that time? A. I worked for the W. P. A. in the District.

Q. What kind of work was it? A. It was line-
31 man's work.

Q. What did you have to do in the discharge of your duties there? A. I climbed poles, strung wire, put in cables in conduits, and helped fix telephones.

Q. Can you tell us where you were doing this work? Was it in Washington, D. C.? A. Yes.

Q. Where was it in the District? A. The jobs would be all over town.

Q. Can you give us the names of the men that you worked with? A. Mr. Dawson and Tommy Jones and Mr. Crabbe.

Q. Do you know how long you worked at that? A. About 2 months.

Q. Can you tell us the approximate time that you started working as a lineman? A. In October.

Q. Of what year? A. 1936.

Q. Was that the same year that you were injured? A. Oh, no, sir—1935 I went to work for them.

Q. How long did you work there, if you know? A. About 2 months.

Q. Did there come a time that you left the city?
32 A. Yes.

Q. Where did you go? A. To Foley, Florida.

Q. Did you do any work there? A. No, sir.

Q. Did you take your family with you? A. Yes, sir.

Q. Did you return to the city? A. Yes, sir.

Q. Did you, after your return, go back to the work on the same job? A. Yes, sir.

Q. How long did you work there then? A. I forget—6 or 8 weeks, I guess.

Q. Can you give us the approximate date that you finally left there and stopped that work? A. In May, I guess it was.

Q. What year? A. 1936.

Q. After that, did you subsequently work for the Potomac Electric Power Company again? A. Yes, sir.

Q. Do you know when you went to work for them, on what date? A. I don't know, but it was in May,
33 just after I left with the family.

Q. What kind of work did you do when you went back this time? A. Pick and shovel work.

Q. Did you ever work on the compressor any more? A. Yes, sir. They put me back on the compressor.

Q. I forgot to ask you, Mr. Kicklighter, going back to the time you were working as a lineman, did you have any difficulty while so employed? A. Yes, sir.

Q. Tell us what that was. A. I just gave out, and I had headaches, and things like that.

Q. Did this happen while you were working? A. Yes, sir.

Q. Was it necessary for you to climb poles? A. Yes, sir.

Q. Were you ever injured? A. No, sir.

Q. In any way during the time you worked as a line-man? A. No, sir.

Q. Did you have any spells while you were so employed? A. Yes, sir.

Q. Can you describe what took place at any particular time? A. Yes, sir. One day we had some wire to put up, and Mr. Dawson sharpened my spurs for me, and I went to work that afternoon; he worked from one end and I worked from the other end, and after I got up there—I wasn't feeling very good when I went up there—and I got to feeling so bad and my head hurt me. I don't remember what else happened after that, but he said that I quit then.

Q. Did you go back to that job after that accident, do you know? A. Yes, sir, I believe I did.

Q. Did anything else happen after you went back to work there? A. I just got to where I couldn't do the work.

Q. Did you ever have any more spells while you were there?

Mr. Bowen: I believe he has asked that question.

The Deputy Commissioner: I believe the question was, Did you have any spells while you were so employed? And I don't know whether he has answered that fully or not. I would like to know whether or not he had more than one spell.

The Witness: Yes, sir, but that is all that I know.

By Mr. Smith:

Q. Mr. Kicklighter, you say that you went back to work for the Potomac Electric Power Company on the compressor job? A. Yes.

Q. How did you get along this time? A. Not very good.

Q. What do you mean by that?

The Deputy Commissioner: What is the period of time now that you refer to?

Mr. Smith: When you went back to work for the Potomac Electric Power Company, in May, 1936.

The Witness: Mr. Hoover wanted me to work with him in a ditch with a pick and shovel, and Mr. Howell sent me on the machine, and I went on the machine for about a week, and a colored boy cut a cable. They took me off the machine and put me back in the ditch and tried to blame me for breaking the cable, but it was cut by this colored boy. They tried to make it look like I cut it, or something to that effect. And then sent me down to the Benning Power Plant.

By Mr. Smith:

Q. What did you do there? A. They were putting cables across the river, and I worked on that.

Q. Did you get along all right during that work? A. No, sir. I was sick, I kept getting pains in my head, I kept taking aspirins, and then I went to see Doctor Morhart, and he said to take it easy for a couple of days, and I went back to work. Then, the foreman sent me to the office.

Q. What was his name? A. Andy Hessler. When
36 I got to the office, the superintendent came out and asked me who sent me up there, and I said that Mr. Hessler sent me up there. Then he went into the office, and he came back and handed me my check. He said that that was all, and I went back to Doctor Morhart, who said that he was sorry but that there wasn't anything he could do. He suggested that I see Mr. King.

Q. You mean Mr. King at the Compensation Commission here? A. Yes, sir. I saw Mr. King and he referred me to Mr. Myers, and Mr. Myers sent me to the doctor who said that I needed glasses.

Q. Do you know this doctor's name? A. No, sir.

Q. Do you know where his offices are? A. On Seventeenth Street, I think.

Q. Did you get the glasses? A. No. I went back to Mr. Myers, and I said that I had to pay for them, and Mr. Myers said that they couldn't pay for the glasses. My wife sent me to the Community Chest, and they got the glasses for me, but they didn't make my head stop hurting me yet.

Q. Are you using the glasses now? A. No, sir.

37 Q. Did you use them then? A. Yes, sir.

Q. Did they give you any relief? A. No.

Q. Did you ever go back to work? A. No.

Q. I mean for the Potomac Electric Power Company?

A. No, sir. I never did go back to work.

Q. Do you know the date that you last worked for them?

A. It was on the 2nd or the 3rd, I believe it was, of August.

Q. What year? A. 1936.

Q. Did you request them to put you back to work? A. Yes, sir.

Q. What did you say? Whom did you talk to? A. To Mr. Ferry, and he said that he would look into it and that he would let me know, but I haven't heard from him since.

Q. Did you request them to assist you with any further medical treatment? A. Yes, sir.

Q. Whom did you ask for that? A. I asked Mr. Myers.

Q. This Mr. Myers here (indicating)? A. Yes.

38 Q. What was his answer to you? A. "Hell, no, I got what I want in the book."

Q. What was that? A. He said, "Hell, no," and he had what he wanted in the book.

Q. What book? A. He had some papers on the desk, and he said that he had it in the book. I don't know just what he meant; I don't know what he said, whether he had it or he wanted it, I don't know which. He said he would give me \$25 to stay to hell out of his office, and I never went back."

Q. Did you ever work any place after that for anyone else? A. I worked at Bolling Field.

Q. What kind of work was that? A. Laboring, truck driving, and driving a tractor.

Q. Is that W. P. A. or P. W. A. work? A. That is P. W. A. work, I believe it was.

Q. How did you get on with that work? A. I did all right for about the first 2 or 3 weeks, and then I was sick, had headaches, and I remember lying down by the fire one day, and that is all I know.

39 Q. Can you tell us approximately the date when you started on that job? A. No, sir, I don't remember the date of that.

Q. Can you tell us how long you worked there? A. No, sir, I don't.

Q. What year was this? A. 1936.

Q. Was it in the summer, the fall, the winter, or the spring? A. In the fall.

Q. You said something about lying by a fire. How did that happen? A. I just—my head was hurting me, and I just couldn't hold myself up on the machine, and the fellow had a fire built up, and I laid down by the fire, and that is all that I knew. They said that I quit then.

Q. What was the next thing that you knew or that you were conscious of or that you remember? A. I was in Savannah, Georgia.

Q. Was your family with you at that time? A. Yes.

Q. Do you know how long you stayed there? A. No, sir, I don't.

Q. Did you work while you were there? A. My wife said I did, but I don't know.

Q. Did you finally come back to Washington? A. Yes.

Q. How did you get back? Do you know? A.
40 The Salvation Army sent me back.

Q. When did you get back? In what year? A. 1937.

Q. What month, or about what month was that? A. It was about March, I guess it was.

Q. Did you get any work when you came back? A. Yes, sir.

Q. Where? A. With Miss Barber of—

Q. (Interposing) Just a minute. I mean when you first came back to Washington. A. No, sir.

Q. How have you been living? A. On relief, tickets.

Q. Do you know a Miss Rosendorf? A. Yes.

Q. That works for the relief agency? A. Yes.

Q. Is she in charge of your case? A. Yes, sir.

Q. Have you tried to get work? A. Yes, sir.

Q. Have you got work anywhere? A. I got one job.

Q. When was that? A. February, 1937.

41 Q. What were you doing? A. 1938.

Q. 1938? A. Yes.

Q. What kind of a job was that? A. Chauffeur.

Q. That is this year? A. Yes.

Q. Whom were you working for? A. Miss Barber.

Q. How long did you work for her? A. I don't know, but it was 3 days, I think it was.

Q. While working for her, were you in an accident? A. Yes, sir.

Mr. Bowen: What?

The Witness: They told me that I was.

By Mr. Smith:

Q. Do you know where this happened? A. No, sir, I don't.

Q. Were you arrested at that time? A. I was told that I was.

Q. Do you recall the time when you were—Do you
42 recall being taken to Casualty Hospital? A. Yes.

Q. Do you recall being held in the cell at No. 1 Police Station? Can you answer that? A. I don't think I can.

Mr. Bowen: What is the answer?

The Deputy Commissioner: "I don't think I can," was his answer, as I understood it.

By Mr. Smith:

Q. Do you recall being in Police Court? A. Yes, sir.

Q. Do you know what the charge was against you? A. Yes.

Q. Do you know what charge that was? A. Something about my permit.

Q. When you were first arraigned in Police Court, were you tried? A. They told me to come back.

Q. Do you remember how long it was before you were actually tried on this charge? A. No, sir, but it was a good long while.

Q. Before you were finally tried, were you taken to Baltimore? A. Yes.

Q. For examination at the Marine Hospital in Baltimore?

A. Yes.

43 Q. After you returned to Washington did this trial take place? A. Yes.

Q. Do you recall what the outcome of the trial was? A. They told me not to drive any more machines. I couldn't get into any more machines.

Q. Did you plead guilty at the suggestion of your attorney? A. Yes, sir.

Q. Do you know this lady that you worked for by any other name than the name that she gave you, the name Miss Barber? A. They said that her name was different.

Q. I hand you this slip of paper (handing to the witness a paper writing). Is that the paper that she wrote on for you? Is that her writing? A. Yes.

Q. Is that her telephone number? A. I believe it is.

Q. Is that the paper that you turned over to me? A. I believe it is.

The Deputy Commissioner: Speak up.

The Witness: Yes, sir.

(Mr. Smith handed the paper writing referred to to Mr. Bowen.)

44 By Mr. Smith:

Q. I show you this (indicating) copy of a letter which was sent to you in the mail. Is this from William A. Van Duzer, Director of Traffic for the District of Columbia? Do you recall receiving that letter in the mail and turning it over to me? A. Yes, sir.

(Mr. Smith handed the paper writing referred to to Mr. Bowen.)

Mr. Smith: Mr. Commissioner, I don't know whether it is necessary or not, but I don't know whether or not this lady, Mrs. Crawford, responded to the subpoena issued to her. In case she didn't, I would like to present this order of the Traffic Bureau in evidence.

Mr. Bowen: I don't know what it is offered in evidence for or what it is.

Mr. Smith: This paper is the only evidence that Mr. Kicklighter has given me regarding the job that he had working for this lady, and the result of the accident that he had.

Mr. Bowen: I don't think that it is worth anything in evidence.

Mr. Smith: Very well, I will proceed.

The Deputy Commissioner: Mrs. Crawford has been subpoenaed, and she should be here.

Mr. Smith: I would like to present this (indicat-
45 ing) in evidence. This is a letter from the Commissioner of Vehicles and Traffic forbidding him to operate vehicles in the District of Columbia.

Mr. Bowen: My only objection is that it is irrelevant to the issues here.

The Deputy Commissioner: The objection is noted. It will be received in evidence and marked in evidence as Claimant's Exhibit 1 as of this date.

(The document referred to was thereupon received in evidence and was by the Reporter marked, "Claimant's Exhibit No. 1, 5/24/38, C. B. C.," and is filed in the office of the Deputy Commissioner with the original papers in this case.)

By Mr. Smith:

Q. During the past year, have you been treated by any doctors? A. Yes, sir.

Q. Who are they? A. Doctor Cohen and Doctor Silverman.

Q. Can you give us their full names? A. No, sir, I don't believe that I can.

Q. Can you give us the names of the doctors in Baltimore that examined you? A. One was Doctor Jackson, and one was Doctor Anderson, and one was Doctor Spear.

Q. Were there any others? A. At the hospital; I
46 forget his name. There is another one at the hospital.

By the Deputy Commissioner:

Q. What hospital do you mean? Do you mean the Marine Hospital in Baltimore? A. Yes.

Mr. Smith: You may inquire.

Cross-examination

By Mr. Bowen:

Q. Mr. Kicklighter, going back to the date of your accident in 1935, after you had the accident, how were you taken to the hospital? What kind of transportation was given you? A. I don't know that; I don't know anything about it.

Q. Didn't you get up and walk to the truck and get on to the truck and sit in the driver's seat? A. I don't know.

Q. Did you do that? A. I don't know. I don't think so.

Q. Do you know whether or not you did? A. I don't know whether I did or not.

Q. Did you go to the hospital in a truck, in a company truck? A. I couldn't tell you that; I don't know.

Q. When you got to the hospital, to the door of the hospital, did you walk into the hospital? A. I don't
47 remember.

Q. Do you say that you didn't walk in the hospital? A. I didn't say that; I don't know.

Q. Now, after that piece of hose struck you on your left forehead—

The Deputy Commissioner (interposing): The right forehead.

By Mr. Bowen:

Q. Was it the left or the right? A. It was the right.

Q. The right forehead, what did you do? A. I don't remember anything.

Q. You don't remember what you did? A. No, sir.

Q. Did you get up? A. I don't know.

Q. Did you walk away? A. I don't know.

Q. When you went to the hospital, were you treated by any physician? A. I couldn't tell you that, sir.

Q. Did you see Doctor Morhart while in the hospital? A. No, sir.

Q. You didn't see Doctor Morhart that same afternoon?

A. No, sir.

48 Q. You say you didn't talk to Doctor Morhart?

A. No, sir, I don't think so.

Q. Do you know Doctor Morhart? A. Yes, sir.

Q. Look at the gentleman to your left. Who is he? A. (After looking at the person referred to) That is him.

Q. That is Doctor Morhart? A. Yes.

Q. And you say you don't remember whether you saw him on the afternoon you were taken to the hospital? A. No, sir.

Q. You can't remember that? A. No, sir.

Q. Did you see Doctor Morhart on the next day at the hospital? A. No, sir.

Q. How long did you remain in the hospital? A. About 2 days.

Q. Then what happened; what did you do? A. He came down and let me out.

Q. I thought you said that you didn't see him at the hospital. A. Not at that time.

Q. When did you see him at the hospital? Did
49 you see him on the first day or on the second day?

A. It was on Sunday that I saw him.

Q. Was that the first day that you went to the hospital, or was that the second day that you went to the hospital?

A. I went there—I was hurt on one afternoon.

By the Deputy Commissioner:

Q. What afternoon? A. On Friday afternoon.

By Mr. Bowen:

Q. Friday afternoon? A. Yes, sir.

Q. When did you see Doctor Morhart? Did you see him on that day, or was it on the next day? A. It was on Sunday.

Q. That would be the third day, would it not? A. Yes, sir.

Q. I thought you said you only stayed in the hospital 2 days.

(There was no audible answer made by the witness.)

By Mr. Bowen:

Q. After you got out of the hospital what did you do? How did you get home? A. Doctor Morhart let me out of his car somewhere on K Street.

Q. Did Doctor Morhart take you from the hospital to K Street? A. Yes.
50

Q. Then what did you do? A. I tried to find my car.

Q. Did you find your car? A. No, sir.

Q. When you failed to find your car, what did you do next? Did you go home? A. I met a fellow who took me home.

Q. After you went home, what did you do then? A. I went to bed.

Q. How long did you remain in bed? A. A day or so.

Q. Then what did you do the next day? A. I went back to Doctor Morhart.

Q. How did you get to Doctor Morhart? A. My father took me.

Q. How did he take you? A. In his car.

Q. In his automobile? A. Yes, sir.

Q. After you reached Doctor Morhart, what did he do?

A. He told me to wash my eyes in boric acid and to take it easy.

Q. Did you do that? A. Yes.

51 Q. Is that on the 3rd or the 4th day after you went home, or is it on the 1st or the 2nd day after you went home? A. I couldn't tell you that.

Q. How long did you remain home before you went to work?

How long did you remain home before you returned to work; how long after the accident did you remain home before you went to work? A. I don't know, sir, but it was a week, I guess.

Q. Did you go to the company physician, Doctor Morhart, before going to work? A. Yes, sir.

Q. Did he examine you? A. Yes.

Q. Did he tell you to go back to work? A. He said I was able to go to work.

Q. Did you go? A. Yes.

Q. Whom did you report to when you went back to work? Who was your boss? A. I just went down to the office, and Mr. Donahue, I believe, told me to wait around and to get my money.

Q. Money for what? A. For the time that I was off.

Q. Did you lose any time? A. Yes.

52 Q. Did you get your money? A. Yes, he gave me about \$16, and I had made that before I was hurt.

Q. That was for work that you had done prior to the accident? A. Yes.

Q. And then after you collected that money, did you go to work that day? A. I went to work on the next day.

Q. Whereabouts? A. On the same machine, but I don't know where.

Q. Do you know whether or not it was the same boss? A. Yes.

Q. Was it Mr. Ault? A. Yes.

Q. Was it on the compressor? A. Yes, sir.

Q. Were you able to operate the compressor that day? Did you put in a full day's work? A. I believe I did.

Q. Tell us just what you did that day after you went back to work, what you were required to do in operating this compressor. A. Whenever the dispatcher sends us
53 to the job, the foreman tells us where he wants us to work, and when the men go to my machine, wherever it is, wherever they want the hole dug, I rig up the machine, and I let down the rigger, and if the assistant foreman is not there to help lay out the plans for the hole, I go ahead myself and get the machine started working.

Q. This compressor—Is it an arrangement that has a derrick attachment (indicating) with a bucket on the end of it that bites into the ground? A. Yes.

Q. And then you hoist up that bucket out of the ground? A. Yes.

Q. Then you move the bucket around wherever you want the dirt to go? A. Yes.

Q. Sometimes it's put in a truck? A. Yes.

Q. And then you hoist it up and over to the truck? A. Yes.

Q. That requires a good deal of skill, doesn't it? A. Why, yes, sir.

Q. Where this dipper digs into the ground, are there men working around there? A. Yes, sir.

Q. How many men were working around there on the day when you were working? A. I don't remember,
54 but I usually keep 3 men.

Q. Those men were working where you had to operate the dipper? A. Yes, sir.

Q. Did you have to notice where the men were working when you were operating the dipper so as not to hit the men? A. Yes, sir.

Q. So you had to watch out or you would hit the men who were working on the job by the dipper when you brought the dipper around and put the dirt on the truck? A. Yes.

Q. You did that on the day when you went back to work, didn't you? You made your day's work, didn't you?

The Deputy Commissioner: Just a minute. I want him to answer your question.

By the Deputy Commissioner:

Q. Did you do that on the day when you went back? A. I don't remember whether I did or not. I remember that I

worked on the machine when I went back, but whether or not I worked on that particular day on the machine, I don't remember.

Mr. Bowen: May I proceed?

The Deputy Commissioner: Yes, sir.

By Mr. Bowen:

55 Q. You did resume the kind of work that you had been doing prior to the accident; that is, operating this digger or compressor? A. Yes, sir.

Q. How long did you continue at that work from the time that you returned from the accident? How long did that last, that particular work? A. Until after the heat of the machine would make it hard for me to work.

Q. What month and what year was it? A. That was in 1935.

Q. What month? A. Around about June or July; I don't remember.

Q. About June or July of 1935? A. Yes.

Q. Had you lost any time from your work after returning from the accident? A. Yes, sir.

Q. How much? A. Approximately 3 or 4 days.

Q. 3 or 4 days? A. Yes, sir.

Q. Do you remember those days that you were off? A. No, sir, I don't.

Q. What month were they in? A. No, sir, I don't.

56 Q. How soon after you went back to work—How long did you continue to work on that particular job? A. A day or so before I said it got too hot, and then Doctor Morhart—then they sent me to a doctor in Georgetown.

Q. What month or year was that? A. I don't remember. That was in July or August, I think.

Q. Of 1935? A. Yes.

Q. Haven't you always had trouble standing hot weather? A. No, sir.

Q. Prior to the accident had you at times gotten off of your truck and laid down? A. No, sir.

Q. You never did? A. No, sir.

Q. Let us proceed from July or August, 1935. What did you next do after that time? Did you quit work? A. What?

Q. You said you worked on the compressor or digger

from the time you returned from the accident until, I think you said, July or August of that year; is that correct? A. Yes.

Q. I am asking you what you did after that in the
57 way of employment. Whom did you work for after that time? A. The W. P. A.

Q. In what month did you go to work with the W. P. A.? A. In October, I think.

Q. October, 1935? A. Yes, sir.

Q. How long did you work for the W. P. A. from October, 1935? A. About 2 months, I guess.

Q. Didn't you state in answer to your attorney's question a while ago that you had resigned in February, February 20, until the following February? A. I did what?

Q. I am asking you whether or not when your attorney asked you when you resigned from work, what was your reply made to him? Did you tell him that you had quit work for the company in July, 1935? A. No, sir, September.

Q. That is what I was thinking. You told him that you quit work in September. You are mistaken, then, and you did work from May 31 to September, 1935, when you quit? A. Yes.

Q. Then you say you went to work for the W. P. A.? A. Yes, sir.

Q. What kind of work was that you were called
58 upon to do? A. That was lineman's work.

Q. Climbing poles? A. Yes.

Q. Climbing poles. Are you furnished with spurs or with anything to help you climb those poles? A. Yes, sir.

Q. You are furnished with some kind of equipment for climbing the pole? A. Yes, sir.

Q. It is right hard work to climb those telephone poles, is it not? A. Right hard work, yes, sir.

Q. But you did climb the poles? A. Yes, sir.

Q. Did you string any wires from one pole to another? A. Yes, sir.

Q. What was the voltage of those wires? A. That would depend, but we usually put up dead wires.

Q. For what purpose? A. For fire boxes.

Q. What kind? A. Telephone or fire box wires.

Q. What would you say would be the height of those poles? A. 20 or 25 feet.

59 Q. How many poles do you suppose that you climbed while you were climbing poles at that time?

A. I don't remember, because I didn't work every day at that time.

Q. But you did work a number of days climbing poles?

A. I would say a few days, yes, but not a great deal?

Q. What other kind of work did you perform for the W. P. A. besides climbing poles? A. On this particular job?

Q. At this particular time? A. We helped put a cable through the manholes.

Q. Through the manholes? A. Yes, sir.

Q. Did you have somebody to help you pull that cable through? A. We all worked together.

Q. That requires considerable strength, does it not? A. I don't think that it does.

Q. It does not? A. No, sir.

Q. Besides pulling cables in manholes and climbing poles, which you have testified to, what other work did you do for the W. P. A. at that time? A. Not any, sir.

Q. That is all the work that you performed? Yes,
60 sir.

Q. When did you quit the W. P. A. work? A. In December or January.

Q. What? In December or January.

Q. Either December, 1935, or January, 1936, you quit the W. P. A. work? A. Yes.

Q. Then what work did you do after that and for whom? A. For the P. W. A.

Q. Was that for the same W. P. A. authority? A. No, sir.

Q. Was that another W. P. A. place, another field? A. Yes.

Q. Where was that? A. That was in Bolling Field.

Q. What month and year was it that you went to Bolling Field? A. It was in the fall.

Q. Of what year? A. 1936.

Q. 1936? A. Yes.

Q. So between January, when you quit the job with the W. P. A., and went to Bolling Field, what did you do? A. I worked for the company.

61 Q. When did you go back to work for the company? A. In May, I think it was?

Q. May of what year? A. May of 1936.

Q. How long did you remain with the company at that time? A. I was discharged in August.

Q. What? A. I was discharged in August.

Q. From the time of your employment from May, 1936, to August, 1936, what kind of work did you perform? A. Pick and shovel work for a week or so, then I went on the compressor at the Benning Power Plant at the River.

Q. You did some pick and shovel work, and you also did some work on the compressor at the time you went to the Benning Plant? A. Yes.

Q. What kind of work did you perform at the Benning Plant? A. Pick and shovel work or taking care of the pump that was pumping out the mud where they were putting in the cable.

Q. Did you drive the truck at any time during the month of May? A. Mr. Nascartals told me to go to the
62 office, and I went to the office, and Mr. Donahue told me that I would have to get straightened out with Mr. Hoover before I could go back to work, and I didn't do any work any more that day. Mr. Hoover said that he would fire me for leaving the job if I ever did it again, and I went back to the office, and they sent me to my machine, and then they kept me there for a couple of days, and then they sent me to Maryland.

Q. Did you ever complain to your boss after you returned after the accident about having headaches or any dizziness? A. Yes, sir, he knew about it.

Q. Whom did you complain to, to what man? A. To Mr. Whiteside, and he sent me to a doctor in Georgetown.

Q. What month and year was that? A. That was either in June, July, or August; I don't know which date it was.

Q. I ask you what was the name of the doctor in Georgetown. Can you remember the name of that doctor? A. I don't know his name.

Q. You say that Mr. Whiteside sent you? A. Yes.

Q. What was the matter with you? A. I had headaches.

Q. Where was it hurting you? A. It was a sort of a pounding like on the right side of my head, and I
63 couldn't hardly stand it.

Q. At that time you had been having them between May and September of 1935? A. Yes, sir.

Q. You went to Mr. Whiteside about it and he sent you to Georgetown? A. Yes, sir.

Q. Did you make a complaint of having these pains in your head to any other physician or man in authority in the company? Did you make any complaints? A. I don't know, but I didn't run around telling everybody about it.

Q. I ask you if you had made any complaint to your boss of the fact that you had the pains in your head. Did you ask to be relieved on account of the pains in your head? A. I did once or twice.

Q. What days did you get relieved? A. I don't remember.

Q. Who was the boss that you went to? A. Mr. Ault.

Q. You went and told him that you wanted to get off and you told him the reason why? A. I didn't tell him. Mr. Dickey told him.

Q. You told Mr. Dickey? A. Yes; he was the dispatcher. I told him that I had pains in my head.

Q. There were 3 days that you say you had these pains in your head? There were 3 different days? A. That is correct.

The Deputy Commissioner: He said that he complained of pain on 3 different times.

65 By Mr. Bowen:

Q. That is between May 31 and September, 1935? A. Yes, sir.

Q. Then you went to work for the W.P.A.? A. Yes, sir.

Q. And did you lose any time climbing poles on account of your headaches? A. I don't know as I did, but if I did, I didn't lose more than a day or two.

Q. Did you have headaches then? A. Yes, sir.

Q. Did you ever get them climbing these poles? A. Yes, sir.

Q. Did you make a complaint to the boss or someone in charge? A. Sometimes I would.

Q. How many times did you ask to get off because of dizziness or headaches? A. I don't know.

Q. Who was your boss? A. Mr. Dawson.

Q. Anyone else? A. There was another man, but I don't know his name.

Q. Was Mr. Dawson the man who let you off for
66 your headaches? A. I don't remember exactly.

Q. Did you ever ask to be laid off on account of headaches or dizziness while working for the W. P. A.? A. I don't remember.

Q. Did you lose any time? A. I may have lost a day or two.

Q. Was that day or two lost on account of headaches or dizziness? A. If I lost any time, it was, yes.

Q. When you worked at Bolling Field in the following December or January of 1936, did you lose any time there on account of headaches or dizziness? A. Yes.

Q. Who was your boss at that time? A. I had several bosses at that time.

Q. Name one or two or three of them, or how many bosses you were working under. A. I mean—I don't know that I worked under any of them. They were just bosses. They didn't go out on the job.

Q. Who told you what to do at Bolling Field? A. Mr. Martin.

Q. What did you tell him was the reason you wanted to get off? A. I told him that I was sick.

67 Q. Had headaches or dizziness then? A. Yes."

Q. What is Mr. Martin's job? What is his title? A. He was the dispatcher.

Q. After you worked at Bolling Field, did you work for the Power Company any more? A. No, sir.

Q. You never worked for them any more? A. No, sir.

Q. When was the last month, day, or year that you worked for the power company? A. On the 2nd or 3rd of August, I believe it was.

Q. Of what year? A. 1936.

Q. You spoke of going down to Georgia and taking your family with you. What year was that? A. In 1936, I guess.

Q. Do you remember what month that was? A. No, sir, I don't.

Q. It was after the time that you spoke of having a fire and quit? A. Yes.

Q. Who had the fire? A. A colored fellow.

68 Q. Was it before or after that time that you went to Georgia? A. After that time.

Q. Then you came back to Washington in what month, and what year? In what month or year was it that you came back from Georgia to Washington? A. In March, I believe it was.

Q. What is your full name? A. Raymond W. Kicklighter.

Q. Do you know who Repper Kicklighter is? A. No.

Q. Is he a brother of yours? A. No.

Q. Is he any relation of yours? A. Not that I know of.

Q. Did you ever assume that name? A. No.

Mr. Smith: I think this is entirely improper.

The Deputy Commissioner: I don't know whether it is or not, it may be.

Mr. Smith: It is improper cross-examination. There has been no evidence heretofore submitted, and I think it is incompetent, irrelevant and immaterial to the issue.

The Deputy Commissioner: If you are objecting to it, I will overrule the objection. You may proceed.

By Mr. Bowen:

Q. When you went on relief in 1937 or 1938—
69 which date was it that you went on relief; March, 1938, or February, 1938, or February, 1937? When you say relief, you meant working for the W. P. A.; is that right? A. That is different.

Q. Who did you report to for relief? A. The Board of Welfare.

Q. You have been on relief ever since? A. Yes, sir.

Mr. Bowen: That is all.

Mr. Smith: Just one or two more questions.

Redirect examination

By Mr. Smith:

Q. Mr. Kicklighter, before your injury as a compressor operator, and while you were working there, I want you to tell the Commissioner what your average earnings were, how much money you made? A. I never, unless it was very bad weather, went under \$20 a week. It was anywhere from \$20 to \$28 and \$38. It would be \$22, \$25, \$28, and \$27, \$30, \$38.

Q. What was the most that you ever made in a week? A. \$38.50. That was just before the accident about a week.

The Deputy Commissioner: Can the employer submit a pay roll record—

Mr. Bowen (interposing): We will be glad to do so. Do you want that put in evidence now?

The Deputy Commissioner: Later.

Mr. Bowen: You have the original of it, I believe.

The Deputy Commissioner: Is that here?

Mr. Bowen: Yes.

(The Deputy Commissioner examined the file in the case.)

The Deputy Commissioner: The pay roll records in the file do not indicate that the claimant worked substantially all the year preceding the injury, but further evidence will be introduced in that respect, or a stipulation will be entered into by both sides as to what the average weekly wages were at the time of the injury.

Are you through, Mr. Smith, with this witness?

Mr. Smith: Yes.

Examination in Chief

By the Deputy Commissioner:

Q. When did you first begin to get medical treatment?

A. In March.

Q. In March of what year? A. 1937.

Q. March, 1937? A. Yes, sir.

Q. Is that the first treatment that you received from the date of your injury, from the date of the accident, May 24, 1935? A. Except the doctor in Georgetown who told me to wash my eyes in boric acid.

Q. Up to the time that you started to get medical treatment, the only complaint that you thought you had was the headache and dizziness? A. Yes.

Q. Is that all the complaints that you had? A. Yes, sir.

Q. When was the last time that you performed any work at all? A. At Bolling Field.

Q. What was the last day that you worked there? A. I don't remember.

Q. Could you give me an approximate date? A. November, I believe it was.

Q. November of 1936? A. Yes, sir.

Q. What was the reason for your stopping work at that time? A. I don't know, sir, but I know that I had terrific headaches, and I couldn't hardly stand it, and that is all I remember.

Q. Do I understand you to say that you continued to work for some time after you began to get medical treatment; is that correct? A. I did work some of the time.

Q. Did I understand you to say that you first got treatment in March, 1937? A. Yes.

Q. And then you said that you worked until November, 1937; is that correct? A. No, sir.

Q. November, 1936? A. Yes, sir.

Q. Did you know what the headaches were due to? A. No, sir, I didn't. Only the doctors at Georgetown and Doctor Morhart—and I did what they told me to do.

Q. When did you first learn what the headaches were due to? A. I was told in March, but I didn't know until May or June.

Q. Of what year? A. 1937.

Q. Who was it that told you? Was it a doctor? A. I believe it was my wife who told me that that is what the doctor said.

Q. She said that that is what the doctor said? A. Yes.

Q. What did she say that the doctor said? A. That they were caused from the blow on my head that made me have a headache.

Q. Since you stopped work, are you getting any better? A. Yes, sir. Since I came back from the hospital I think I am better.

Q. From what hospital? A. Baltimore.

Q. You mean the Marine Hospital in Baltimore? A. Yes.

Q. There is one statement that you made that I want you to clear up for me. You said that you went back to the office of the employer, and Mr. Myers said that he would give you \$25; do you remember that? A. I don't remember that he said that he had \$25 or that if he had \$25 he would give it to me. I don't remember just which it was.

Q. He didn't actually give you \$25? A. No. He just said that he would give me that to keep to Hell out of the office. That is when my wife sent me to the Community Chest to get glasses.

The Deputy Commissioner: That is all.

I think the record should indicate that the claimant answers the questions very slowly and after some deliberation.

(Thereupon the witness was excused and retired from the witness stand.)

The Deputy Commissioner: I think we can take a recess.

(Thereupon a recess was taken, after which the
74 following occurred:)

Thereupon **Dr. Stanley H. Berenstein** was called as a witness for and in behalf of the claimant, and being then and there duly sworn by the Deputy Commissioner, assumed the witness stand and, upon examination, testified as follows:

Direct examination.

By Mr. Smith:

Q. Doctor, will you state your full name? A. Doctor Stanley H. Berenstein.

Q. You are a practicing physician in the District of Columbia? A. Yes, sir.

Q. How long have you been so engaged? A. Since the 1st of February, of this year, in private practice.

Q. What school did you graduate from? A. The University of Maryland.

Q. Since that time were you an interne in certain hospitals? A. From July 1, 1935, to June 1, 1936 at Emergency Hospital; from July 1 until November 30, 1937 at Gallinger.

75 Q. What hospital are you connected with now, Doctor? A. I am connected with Gallinger Hospital and Childrens Hospital.

Q. Were you an interne at the Emergency Hospital on May 24, 1935? A. Yes, sir.

Q. I show you this (indicating) file which are the records of the hospital.

The Deputy Commissioner: I think those records should be in evidence, unless they are admitted.

Mr. Smith: I submit that they will be offered in evidence

By Mr. Bowen:

Q. Which of those writings (indicating) were made by yourself? A. I think some of those were made myself, and others are just hospital sheets on the patient. I saw the patient twice. Once at the emergency room, and again at the institution. I also saw him on the different floors and I took his history.

Q. Is that all taken as of May 24, 1935, was it all as of that time? These records that you refer to were taken as of May 24, 1935.

The Deputy Commissioner: The records are omitted in evidence as Claimant's Exhibit No. 2.

(The records referred to were received in evidence
76 and were by the Reporter marked "Claimant's Exhibit 2, 5-24-38, C.B.C., and are filed in the office of the Deputy Commissioner with the original papers in this case.)

By Mr. Smith:

Q. What is this card? A. That is the card that the records start with.

Q. The card is made out on admission? A. Yes.

Q. There are seven or eight pages of this report all together? A. Yes.

Q. I show you this original admission card and ask you whether or not any of your writing appears on that, Doctor? A. (After examining the card referred to) No, sir.

Mr. Bowen: Will you ask him who wrote that? It may be the subject of an objection.

By Mr. Smith:

Q. Do you know who wrote that? A. Yes. The person who wrote that was the nurse, Miss Blanche Stuart.

Q. Now, I show you a second page of this report (indicating) and ask you if that is your handwriting? A. (After examining the paper referred to) Yes, sir, that is my handwriting.

Q. Will you tell us just what it means? A. This
77 is a hospital sheet which is taken when the case comes into the Emergency Hospital. Here is the patient's name, age, occupation, and so forth. His name is

Raymond Kicklighter, age 30, occupation compressor operator, and other general information regarding the history, it shows here that the cause of the injury was an air hose, the diagnosis of the case is laceration of the forehead on the right, and remarks say that while on duty for the Potomac Electric Power Company at work at Eighteenth and R Street, Northwest, an air hose hit him in the head, and knocked him unconscious for a short time.

The physical examination made at that time shows a swelling about the size of a walnut over the right eyebrow and also a small laceration. Reflexes were present and active, patient was a little hazy but oriented. The important thing was the laceration of the forehead on the right and the concussion.

Q. Will you explain the card of admission in connection with what your diagnosis was? A. When he came into Emergency room I was down there, and my chief, that is, the man in charge of the emergency room, and in this particular case, Doctor LeBauer, I called Doctor LeBauer and we went over the patient. We then got in touch with Doctor Morhart. We found out the man had been working at Eighteenth and R Streets, Northwest, and had been
78 hit with a hose and that he had been unconscious for some time. That was at one-thirty p.m. My active part in the case was putting in two sutures in the cut.

Q. Will you explain, please, for the purpose of clearing this up, just exactly where these sutures were taken? A. You could find that in the record, but it was on his forehead. There were two black sutures taken over the right forehead, but just exactly where I don't know. Perhaps if you looked at his head you could see a scar, the scar would be there now.

Mr. Bowen: Does the patient hear? Let us see if he has them.

Mr. Smith: He should have been in here.

(Mr. Smith went to the witness room and returned with the claimant.)

By Mr. Smith:

Q. Doctor, is there anything else in this record of your own notation? A. The only thing else there in my handwriting is the orders that I made on the man.

Q. There is nothing else in your own handwriting? A. No.

Q. Did you give any orders to the nurses or to anyone else on this patient? A. Yes.

79 Q. That is shown in the record? A. That is shown here (indicating), yes. He was to be put on a regular diet, blood pressures were to be taken every four hours, he was to have bathroom privileges, and he was to have ice caps to the head. Medications consisted of aspirin and luminol.

Q. Do you know anything about the bedside notes made by the nurses there? A. They are probably just the same as what I ordered to be done regarding the blood pressure and the treatment of the patient.

Q. It is reasonable to assume that the orders were carried out? A. Yes, sir.

Q. I ask you this: How severe a concussion would you say that this man received? And the extent of it?

Mr. Bowen: Has he said that there was a concussion?

The Witness: Yes.

By Mr. Bowen:

Q. Did you say that you found it? A. A concussion, yes. That question is an ambiguous question.

The Deputy Commissioner: If you can't answer the question, Doctor, say so.

The Witness: I can't answer it.

80 By Mr. Smith:

Q. From your description of the injury, what would you say as to its severity? A. I couldn't answer that without making a comparison, if that is what you mean.

The Deputy Commissioner: Answer it in your own way.

The Witness (continuing): Usually what normally happens is when a person gets a head injury and we receive him, ordinarily we just sew up the laceration and send the person home and tell him to come back for check ups. In this particular case we thought the injury was sufficiently severe to keep him there and to wait for Doctor Morhart, and we considered it severe enough to keep him there and to watch him for a few days.

Mr. Smith: You may inquire.

Cross-examination

By Mr. Bowen:

Q. How long was he kept in Emergency Hospital? A. I didn't look at that.

Q. (Handing a paper writing to the witness) I would be glad if you would look at this (indicating) and tell us. A. (After examining the paper writing) He was admitted on the 24th of May, and he was discharged on the 26th; that would be two days.

Q. What was his blood pressure when you took it?

81 A. The blood pressure?

Q. Yes. A. (After examining the paper writing further) 116/68.

Q. Over what? A. Over 68.

Q. What does that indicate, if anything, as to the patient's condition? A. As to the condition then? I think that would be considered usual, not unusual.

Q. You stated a while ago that you could not answer a question regarding the nature of the concussion or describe it in any way? A. I did answer that by a comparison.

Q. What did you find was the nature of that concussion, not by comparison, but what you found yourself? A. I found that the patient had a concussion.

Q. What do you mean by that? A. Well—

Q. (Interposing) You mean that he had a blow on his forehead? A. Now, a blow on the forehead is evident. We can see that—

Q. (Interposing) What else did you find other than a blow on the forehead? Did you x-ray? A. No.

82 Q. What did you do? A. The patient was hazy and he had an injury on the head, and naturally what we would look for would be a fracture of the skull or whether or not he had just been shaken up, or whether his injury was severe enough to cause him to be that much disoriented that we would have to watch him.

Q. Was he unconscious? A. No.

Q. He wasn't? A. No.

Q. When you saw him? A. No, sir.

Q. Were his eyelids closed? A. That, I couldn't remember.

Q. What was the condition of his body? Was his body relaxed or limber? A. I couldn't answer that.

Q. Was he pale? A. I couldn't answer that.

Q. Was his body cold, clammy, damp, or sticky? A. I couldn't answer that.

Q. What was the condition of his pulse? A. His pulse?

Q. Yes. A. I have a record of that. (Examining
83 a paper writing) His pulse was 76.

Q. What does that indicate, if anything, as to his condition?

By the Deputy Commissioner:

Q. Was it abnormal or normal?

By Mr. Bowen:

Q. That is what I mean. A. I can't answer that.

Mr. Bowen: I would like to have him answer the question whether or not it is normal or abnormal.

By Mr. Bowen:

Q. What does a pulse of that amount indicate? A. I couldn't answer that.

Q. What was his breathing at that time? A. His respiration was 20.

Q. What does 20 mean, was that deep breathing or what? A. I couldn't answer that.

Q. What was the condition of the bladder and the bowels at that time? A. I couldn't answer that.

Q. Were they being emptied involuntarily? A. I couldn't answer that.

Q. What symptoms of inflammation did you find on the patient at that time? A. The patient had an injury
84 over his right forehead, a laceration, and he was hazy, and that is about all that I can say.

Q. Where there is a well-marked concussion, will you tell me whether or not the questions I asked you are not indicative symptoms in a person having a concussion. Those questions that I asked you would be the symptoms of a well-marked case of concussion, would they not? A. Usually present?

Q. Yes. A. I wouldn't say they all are.

Q. If you have a severe injury or concussion, you get those symptoms; don't you? You seldom see a concussion of any severity without those symptoms; do you? A. Without all the symptoms? Yes, that is possible.

Q. It is possible. A person suffering from a severe concussion would be allowed to go home in two days, ordinarily? I mean, ordinarily would a person suffering from a severe concussion be allowed to go home in two days from the hospital? A. If the doctor wanted the patient to go home, yes.

Q. Is that the usual treatment? A. Every patient has different treatment and symptoms. There would not be any set rule.

Q. Did you see him the day that he went out of the hospital? A. I don't think so. I didn't give him the
85 final check up.

Q. Did you see him when he came into the hospital? A. Yes.

Q. Was he walking? A. I don't remember.

Q. Did he walk into the hospital? A. I don't remember.

Q. Did you ask him any questions? A. Yes.

Q. Did he give you any statement as to how he met with the accident? A. I couldn't answer that, probably the nurse got that. No, I see here (indicating) the statement of his reception of the accident as I got it. I must have gotten that.

Q. He gave you that? A. Yes.

Q. He was perfectly conscious? A. Yes.

Q. You don't know whether he was standing up or sitting down when you saw him? A. No. You are asking me what happened a good long time ago.

Q. I realize that, but just do the best you can. A. I am.

Q. Where did you see him first? A. In the emer-
86 gency room, first.

Q. What was his condition at that time; was he sitting up or standing or what?

The Deputy Commissioner: Let us get on with the examination.

The Witness: I don't remember.

By Mr. Bowen:

Q. You only saw him on the first day? A. That is the only time that I saw him.

Q. You didn't see him on the second day? A. No.

Q. You don't know what his condition was then? A. No.

Q. How much of this record did you make yourself? A.

I made out the history and the physical examination of the patient. That is what I made out in pen and ink; that is my writing.

Q. You were not responsible for anything except that one page. How is that indicated in the record, so I will know? A. That is the second page of the record.

Q. Who made the rest of the record, if you know? A. That is easy to tell you because the person who made it was the nurse. (After examining the paper writing) The name of the nurse is not here; she didn't sign her name.

Mr. Bowen: Mr. Commissioner, I move to set
87 aside so much of the evidence in these records of the hospital that has not been identified by the witness as being of his own knowledge.

The Deputy Commissioner: The objection is noted.

By Mr. Bowen:

Q. How many times did you take his blood pressure on the day that you saw the patient? A. I cannot answer that, either. I don't see any record of blood tests in the emergency room.

Q. Did I understand you to say on direct examination that more than one blood test was taken? A. I said that I ordered more than one taken.

Q. You don't know whether or not any blood pressures were taken except the one you took, of your own knowledge? A. I don't even claim that I took his blood pressure myself. There is no record there to show that. There are blood pressures shown here that were taken by someone.

Q. Just what did you do of your own accord for the patient? A. I examined the patient, I sewed up the laceration on the forehead, I had him go back into the rest room, and I called the chief who examined the patient with me and verified my impressions. That is what I did.

Q. You have already testified about some blood pressures beside one. Will you read the other blood pressures?

A. The one at 6 p. m. that night was 116/68. That
88 is the one I mentioned, but I didn't say that I made the pressure. There is another at 10:30 that night which was 100/64.

Q. What are the others that were taken ? A. I don't see any record of any taken after that night. The next day was Saturday, and none were taken.

Q. There is no record of any more blood pressures taken?
A. No, sir.

Q. There are no records of blood pressures being taken on the next day? A. No.

Q. Is there any record of pulse being taken on the next day? A. Pulse? (After examining the paper writing) It may be that that would be on the temperature sheet. Here it is. Here are the records of the pulse as it was taken.

Q. Read that. Let us get them. A. 85.

Q. When was that? A. At 4 p. m. on the 24th.

Q. When was the next one? A. I am wrong. It was 75.

Q. At what time? A. At 4 p. m. on the 24th. At 8 p. m. it was 70, and at 8 a. m. on the next morning it was 75. At 8 a. m. it was on the next morning 75.

89 Q. Would that be normal, as far as you can say?

A. I cannot answer that.

Mr. Bowen: That is all.

Redirect Examination

By Mr. Smith:

Q. Doctor Berenstein, May 24, 1935 was three years ago?
A. Yes.

Q. You have never had occasion to go to these records until today? A. No, sir, I never referred to them at all.

Mr. Smith: That is all.

Examination in Chief

By the Deputy Commissioner:

“Q. At the time of your examination, Doctor, did you find any evidence of unconsciousness? Had there been any unconsciousness before you saw him? A. Only that statement given here by the patient, the statement of the patient that he was unconscious for a short time.

Q. Did you find any evidence of unconsciousness? A. When I saw him?

Q. Yes. A. I can't answer that, either, because I don't remember.”

The Deputy Commissioner: That is all.

Mr. Smith: That is all.

90 Mr. Bowen: That is all.

The Deputy Commissioner: You are excused.

(Thereupon the witness was excused and retired from the witness stand.)

Thereupon **Dr. Morris Silverman** was called as a witness for and in behalf of the claimant, and being then and there duly sworn by the Deputy Commissioner, assumed the witness stand and, upon examination, testified as follows:

Direct Examination

By Mr. Smith:

Q. Your full name is Morris Silverman? A. Yes.

Q. You are a practicing physician in the District of Columbia? A. I am.

Q. How long have you been so engaged? A. I have been in practice for the past two years.

Q. Prior to that time, from what schools did you graduate? A. Well, I graduated from George Washington Medical School in 1933, had a year internship at Gallinger from 1933 to 1934, I had a year of active duty with the United

91 States Army from 1934 to 1935, from 1935 to 1936 I was resident at Chesapeake and Ohio Hospital at Huntington, West Virginia, and since that time I have been in private practice in Washington since 1936.

Q. Are you at this time connected with any of the local hospitals? A. Yes, I am at the clinic at Emergency Hospital, and at Gallinger Hospital.

Q. Doctor Silverman, did there come a time when you saw this man here (indicating); that he was sent to you? A. Yes.

Q. Do you recall when that was? A. Yes. I am at the medical clinic at Emergency Hospital, and on March 17, 1937, Mr. Kicklighter came into my room with one of my patients there at the clinic. That was the first time that I saw him.

Q. Can you tell us, if you know, who sent him there? A. They come down to the clinic from the Board of Public Welfare. If these people can't pay for medical treatment,

the Board of Public Welfare gives them a permit, and they go to one of the city's clinics.

Q. What was the nature of the examination of him on the first time that you saw him? A. He was referred to me as the medical physician there, and at that time his general complaint was severe headache, loss of memory, 92 nervousness, and a quivering of the left eyelid, and dizziness. I got a history from him, but we don't go into great detail in these histories, because we are too busy. I got a history from him of an injury in May, 1935.

Mr. Bowen: I object to going into what he told you.

Mr. Smith: I think it is perfectly proper.

The Deputy Commissioner: We won't go into that point. Objection overruled. You may answer that.

Mr. Bowen: Exception.

The Witness (continuing): He was injured in May, 1935, when an air hose hit him on the head and knocked him unconscious for a couple of hours, and since that time he has had several periods of unconsciousness and loss of memory.

By Mr. Smith:

Q. Now, Doctor, what, if anything, did you do for him after that? A. Well, I examined the patient, that is the usual procedure, we ask them what is wrong with them and examine them.

Q. Of what did the examination consist? A. The first thing we do is to look the patient over. This patient appeared to be worried and depressed. Further examination showed him to be slightly undernourished, but in fair physical condition. His reflexes were found to be slightly retarded, and in view of the results of my examination, I found that he was suffering with amnesia or loss of memory of a periodic type and that he was suffering 93 from a disease due to a brain injury.

Mr. Bowen: I move to strike out that part of the doctor's statement with reference to brain injuries, unless it can be proven that he is qualified as a brain specialist.

The Deputy Commissioner: The objection is overruled, and his answer will be taken in the light of his qualifications.

Mr. Smith: I think I can submit more qualifications if Mr. Bowen would like them.

By Mr. Smith:

Q. Doctor Silverman, have you made any special duty of neuropsychiatry? A. Before I studied medicine, I measured in psychology. In fact, I often thought of going into the psychopathic field. I believe during my medical experience I have had considerable experience in mental cases, and I have done considerable post graduate work along that line.

Q. In other words, while you were at the hospital at Huntington, West Virginia, you had occasion to examine and to treat many of such patients? A. Yes, sir.

Q. You also have had general experience in that work? A. Yes, sir.

Q. Coming back to your examination of Mr. Kicklighter, did you make any suggestions regarding the case to
94 any other physicians? A. Yes, I did. I referred the case to the neuropsychiatric division of the clinic. One of my duties is to send the patients to whichever department they should go to for treatment. I sent this case to the psychiatric department.

Q. Do you know of your own knowledge that he went to Doctor Shugrue? A. Yes, sir, he did.

Q. Do you know what his finding were?

Mr. Bowen: I object to the findings of Doctor Shugrue.

The Deputy Commissioner: The question is, "Do you know?"

The Witness: Yes, sir, I do. I have seen the report of his findings in the record.

Mr. Bowen: I object to that on the ground that we have a right to cross-examine the doctor on any of his conclusions. If Doctor Shugrue made any findings or conclusions in this case, we have a right to cross-examine him on them.

The Deputy Commissioner: Was the report submitted to you, Doctor.

The Witness: Just in the records, I was going over the records about two weeks later, and I saw the report, and I read it.

The Deputy Commissioner: Do you intend to produce Doctor Shugrue?

Mr. Smith: No, we hadn't intended to.

The Deputy Commissioner: Then I will have to
95 sustain the objection.

By Mr. Smith:

Q. Did you have any blood tests made? A. Yes, I had a blood wasserman made, and I took the blood myself.

Q. What did they show? A. The blood tests were negative as far as syphilis is concerned.

Q. Let me ask you this. From that time on, did you continue to treat him? A. Yes, I did.

Q. Have you been treating him up to the present time? A. Yes, I have.

Q. Where has this treatment taken place? A. I have seen him at the clinic off and on, and he has come to my office at times, and I have seen him at his home also.

Q. In that connection, directing your attention to the 16th day of January, 1938, this year, did you see this man at his home? A. Yes, I did. His wife called me on the telephone and told me that he had been in some automobile accident, and that he had come home very much upset, and she asked me to come down to see him.

Q. What did you find when you saw the patient?
96 A. I saw the patient and he told me that he had been driving an automobile, and he forgot, and he got into a wreck. His wife heard about it and called me.

Mr. Bowen: I object to what his wife said. I move to strike out so much of that testimony as relates to what the wife of the claimant told this doctor.

The Deputy Commissioner: Hearsay evidence is admissible, but if it is not supported by any other evidence then, of course, it will not be considered. We will not strike it, and you may proceed.

By Mr. Smith:

Q. Did you further have a discussion with a doctor at Casualty Hospital about the case? A. Yes, I did. I called up when I got the history of the patient that you have and found out what happened from the doctor in charge of the case.

Q. Is that Doctor Fletcher? A. That is right.

Q. Now, you had been treating Mr. Kicklighter prior to that accident? A. Yes.

Q. At the time that you got there, did you see any change in his condition? A. Yes, there was a change in his condition. He seemed to be more depressed, more con-

97 fused, and more nervous. He was lying on the bed there, and he took quite a bit of time to get off of the bed. That is the way he was.

Q. Considering all of your treatment of this man and everything that you know about him, would you say that the injury he received on May 24, 1935, was the cause of his present condition? A. I really do believe that.

Q. Do you think that this man is disabled? A. Yes, I do. I wouldn't want him to work for me.

Q. What percentage of disability do you think he has at this time—do you think he is able to work at all? A. I don't think he can do satisfactory work, due to the fact that he has lapses of memory. I don't believe he could work unless it would be just for a day or so, and then something would happen.

Q. Would you say he is dependable? A. No.

Q. Do you think as a married man with three children he would be responsible for the capabilities of a family and could properly provide for them?

Mr. Bowen: I object to that. Because the man has three children, I don't believe that could prove or disprove his incapacity.

The Deputy Commissioner: He is talking about ability to work. I will permit him to answer.

98 By Mr. Smith:

Q. You may answer that. A. Will you repeat that again, please?

Q. Do you think that a man in Mr. Kicklighter's position, a married man with three children is capable of the responsibilities of a family? A. He is not.

Mr. Smith: You may inquire.

Cross-Examination

By Mr. Bowen:

Q. Are those records that you referred to the hospital records? A. They are my own personal records.

Q. Do you have any hospital records with you? A. Do you mean from the clinic?

Q. Yes. A. No, I haven't.

Q. Could you produce them? A. I guess they can be produced, yes.

Mr. Bowen: I ask that the records of the clinic be produced showing the treatment of this man and the findings in his case.

The Deputy Commissioner: You may request that they be subpoenaed when you receive a notice of the next hearing.

By Mr. Bowen:

99 Q. Doctor Silverman, those inquiries that you made into the past history of this man, did they show whether or not he had been in the Army of the United States? A. No, the history does not. It is a very superficial history that we take there, because we don't have much time.

Mr. Smith: I would like the record to show that I object to that question as improper.

The Deputy Commissioner: Objection overruled.

By Mr. Bowen:

Q. I am asking whether the records of the clinic show that the patient had any connection with the United States Army. A. I couldn't answer that without referring to the records, without going through the records. It is not in my record.

Q. In the records of the clinic; the official records of the clinic? A. I can't say about those records, but it isn't in my records.

Q. You saw this patient for the first time on March 17, 1937? A. 1937, yes.

Q. Did you see him at any other times subsequent to that prior to January 16, 1938? A. Yes.

100 Q. Would the dates be recorded in the records of the clinic? A. Yes, they should be. I saw him at the clinic off and on, and those visits would be recorded. When he came to my office, those visits would also be recorded.

Q. Do you know how many times this man was examined by you or by other physicians in the clinic? A. I couldn't say without the records. It would be a guess.

Q. These records would show the condition of the patient at that time as to any improvement that might have been made from time to time? A. Yes, sir, they would, but I could not tell you without referring to the records.

Q. Did this patient ever say anything in his history about this being a compensation case? A. Not at all. We didn't know that until months afterwards.

Q. Now, coming down to your professional experience, you testified that you have been in private practice for two years? A. Approximately two years, yes.

Q. During that time as a physician, have you had any private cases involving mental disorders? A. Yes, I have.

Q. How many have you had? A. Just a few there,
101 I have seen many at the hospital, though, at Gallinger.

Q. Is it part of your work that you are called upon to do at the hospital at Gallinger? A. Yes.

Q. Were you an interne at George Washington? A. No, sir, I graduated from the medical school there at George Washington, and I interned at Gallinger.

Q. You interned at Gallinger and you interned at Emergency? A. No. Here at the medical clinic where the patients don't pay. I am on the clinic staff.

Q. What department are you in? A. The medical department.

Q. Are there any specialists on mental disorders there? A. Not at the medical department.

Q. Who do you call upon to pass upon brain injuries in cases of that sort where the man is suffering from a brain injury? A. I believe there is one or two men that go down there. Those men are in the neurological department there.

Q. Are you called upon to examine different cases involving reference to brain injuries? A. They all
102 have to come to me first. I see them first, and I send them to whichever department should treat them. They come to me as a medical man, and I send them to whichever department they should go to.

Q. During this period from March 17, 1937 to January 16, 1938, did other physicians in the clinic examine this patient? A. Surely.

Q. Who were they, if you know? A. Doctor Shugrue and Doctor Cohen.

Q. Are they here today?

Mr. Smith: Dr. Cohen is subpoenaed, but he is not here.

Mr. Bowen: Doctor Shugrue is not here?

Mr. Smith: He is not subpoenaed.

By Mr. Bowen:

Q. What other dates have you besides March 17, 1937, on which you examined the patient yourself? A. I can't give you the exact dates, but it was periodically every two or three weeks.

Q. Would the hospital clinic records show that? A. Yes.

Q. Would you be able to produce those records, sir? A. I think so, yes.

Mr. Bowen: I think, Mr. Commissioner, that the fact that he is going to produce the records, in the interest of time, I would like to reserve further cross-examination until the records are here.

103 The Deputy Commissioner: I can't request the doctor to come back here unless you want to bring him back. If you want to have the records you can bring the doctor back.

Mr. Bowen: I think that would save time. I am very anxious to see what these records show.

The Witness: I have seen those records time after time and I have treated the patient. I can tell you pretty nearly what is on those records.

By Mr. Bowen:

Q. You can tell us? A. I can't tell you the exact dates, but I can tell you what is wrong with him, and what I treated him for.

Q. What did you prescribe for him? A. Sedatives and for his nerves.

Q. Did you hear the patient testify today as to what kind of work he had been doing since the accident? A. I heard part of it.

Q. Did you hear him testify that he returned to work within a week after the accident. A. The record would show that, if he did.

Q. I am asking you if you heard that? A. I don't remember whether I heard him say that or not.

Q. Did you hear any questions that I put to Doctor Berenstein as to whether or not there would appear certain symptoms in a well-marked case of concussion of the
104 brain and he said that none were present at that time? A. Do you mean whether or not I heard him say that?

Q. That he could not say that any of those symptoms were present? A. Do you mean did I hear him say that?

Q. I am asking you from your experience, which you say you have had, whether or not it is usual to find in a well-marked case of a concussion of the brain, the symptoms that I asked Doctor Berenstein about? A. You have varying degrees of concussions. Some are more severe than others, and so forth; the symptoms vary. When people come to the clinic, you don't have time to take a detailed history on the case. You are asking me about whether or not I would notice all these things. You know, you can't remember three years ago.

Q. I am asking you as a physician claiming specialized training in injuries of this sort, whether or not you have ever seen a well-marked case of concussion of the brain without the patient having some of those symptoms which I have put to Doctor Berenstein, such as the eyelids closing, the body relaxed, and limber, the pulse abnormal, the breath slow, the body cold and clammy, or the bladder or bowels emptying involuntarily. I say, have you ever seen a well-marked case of concussion of the brain without
105 the presence of those symptoms? A. I have seen cases without all of them.

Q. Would an ordinary well-marked case of concussion of the brain show that? A. Immediately after the accident, or a day later?

Q. At the time of the accident and a day later? A. At the time of the accident they would probably show shock, and the blood pressure would be down. When the blood pressure is down, you have to know what the person's normal blood pressure is before the accident. A man might have a blood pressure of 120, which is normal, immediately after a brain injury, but before the accident, the blood pressure is 160, and, you understand, under those conditions, the blood pressure would be down to what is ordinarily considered normal. It is very important that you know the patient's normal blood pressure. The same thing applies to pulse. Before you can say that the patient's pulse is normal, you have to know what his history is. There are a lot of people walking around with normal pulses of 100, then, after an accident, the pulse would go to 70, and 70 is considered as normal. We have to know

the patient before in order to say just what his normal would be. You can't just look at a patient and make a diagnosis.

Q. You heard the pulse readings given here? A. Yes. If a normal person's pulse is 72, that is his normal pulse.

Q. Did you hear any readings indicating an abnormal normal pulse?

The Deputy Commissioner: The doctor has said that you have to know the patient before.

The Witness: There are a lot of hyperthyroids running around with a pulse of 125 normally. They go into shock, and the pulse goes down to 90.

By Mr. Bowen:

Q. Take a man who had severe concussion, would he be unconscious right after the accident? A. Usually, yes.

Q. Have you ever had a man who suffered from a severe concussion who was not unconscious at the time of the accident or immediately thereafter? A. Yes, I have.

Q. How many cases would you say you have had like that? A. A few.

Q. How many have you seen in your professional experience? A. About three.

Q. They are all within your experience? A. Yes.

Q. In those cases— A. (Interposing) In private practice.

Q. What comparison can you make with those cases and this one? A. In what way?

107 Q. In reference to their severity. A. Of what?

Q. Of the concussion. A. The injury? You mean the severity of the symptoms afterwards, or the permanent effects?

Q. I mean at the time.

The Deputy Commissioner: Are you questioning as to whether or not there can be a concussion without a fracture?

Mr. Bowen: I hadn't put it to him that way. I am trying to show that where there is a well-marked case of concussion you find certain general symptoms. There have been certain statements made by Doctor Berenstein, but he couldn't swear as to the symptoms that were present, and I am trying to find out if Doctor Silverman, from his

experience in these things, can say whether or not well-marked cases of concussion of the brain have such symptoms present and noticeable. This is just to show the character of the injury that the man had.

The Witness: If a man is unconscious from the brain injury, we suppose that the injury is more severe.

By Mr. Bowen:

Q. Yes, sir, but he wasn't unconscious. A. Not according to Doctor Berenstein. He didn't say that he wasn't unconscious, but he just said that he couldn't remember.

Q. Of course, you heard what he said. The record will speak for itself. A I don't remember whether this man told me that he was or not, because there was no record.

Q. When did you last examine the patient? A. I guess it has been about two or three weeks ago at the clinic.

Q. What were your findings at that time? A. My findings were that the man seemed to be much more normal, and the patient told me—

Q. (Interposing) What were your findings, I am asking you? A. I found the patient to be a little brighter than he had been in the past, and he seemed to be a little more active mentally and physically.

Q. If you found that from your last examination, if you made a similar examination today what would be your findings? A. I can't tell you without making the examination.

Q. Why did you state that the man today is disabled? A. From his past history.

Q. You can't really tell as to his present disability unless you examine him at the present time, can you? A. His present disability?

Q. Yes. A. I saw him three weeks ago, and he has been in the same condition.

109 Q. You say that the last time you saw the patient he had some improvement in his condition? A. Yes—you can be almost dead, you know, and then improve.

Q. I think I am asking you— A. (Interposing) I think I told you.

Q. You are basing your disability not upon his present condition, but on his condition as of three weeks ago? A. Yes.

Q. You say that you found him disabled three weeks ago? A. Yes.

Q. For what reason? A. For the reason that I found on his past history. From his past history which he gave me, from this automobile accident, from his appearance, from previous examinations I had made of him, from the fact that he tells me that people are after him, he has delusions of persecution, he feels that people are against him, he thinks that people are shouting at him all the time and calling him names for what reason he doesn't seem to know—he has told me this on many examinations in the past.

Q. You have access to the records at the clinic? A. Yes.

Q. Do you know whether or not it was testified by the examining board— A. (Interposing) What examining board?

Q. Of the institution to which the clinic is attached, that in their determination, this patient is employable at the present time? A. The examining board—they usually come to me.

Mr. Smith: I think that is a very unfair question.

The Witness: I don't know.

The Deputy Commissioner: The doctor has answered.

By Mr. Bowen:

Q. You have based your opinion as to the disability of the patient entirely upon his statements to you—I mean what the patient told you? A. As well as on my examinations, the past history, what happened in the past.

Q. The past history is the statements that the patient has made? A. With one or two other facts, I mean this automobile accident—

Q. (Interposing) I am asking you just what you have taken into consideration and arriving at your conclusion as to his disability. Did you base your conclusions and findings on the statements that the patient made to you? A. As well as my examinations of him for myself, and my observation of him.

Q. Your observation of him? A. Yes, sir.

111 Q. Did he tell you that a week after the accident he went back to work and that he performed the same work that he had been performing before the accident? A. I didn't inquire about that.

Q. Assuming that the witness has testified that he went back to work— A. (Interposing) Yes.

Q. (Continuing) and that he went back to work a week after the accident, and that he continued in that same employment until the following September of the same year in charge of the compressor with men under him, what would that indicate to you as to the man's ability to work.

The Deputy Commissioner: When?

112 By Mr. Bowen:

Q. Now. A. You mean just take that three-months period and forget what happened afterwards? I wouldn't attempt to answer that question. It is not fair.

Q. You can't answer it? A. I wouldn't attempt to answer it with the other information that I have.

Q. Assuming that the man not only worked for the period which I have told you, but he did some other work for the W. P. A. on a compressor, would that influence your findings? A. You mean assuming all that is true?

Q. Assuming that he also testified that he worked for the W. P. A. climbing telephone poles twenty feet high and stringing wires thereon, does that make any difference to you in your opinion or in arriving at your opinion? You didn't have that information before you at that time, did you? A. I knew that he had worked for the W. P. A., yes.

Q. Did you have the information that he had been climbing poles for the W. P. A.? A. No, not definitely.

Q. And that he had been operating a compressor? A. I knew that he went back to work, was fired, laid off, but I don't know all of the actual information about it.

Q. Was that your own information as you in-
113 quired into the man's history, was that the basis of your whole opinion? A. No, that is wrong. That is my information regarding that one period. I have seen this man in my office several times during the past year.

Q. You also based your opinion on the history given by the patient which excluded the work that he performed after the accident for several months, during which time he climbed telephone poles and operated a compressor? A. That is possible. It is possible for a man to do that, because the changes in the brain tissue come on later.

Q. What changes? A. The changes that follow a concussion.

Q. What changes would they be? Deterioration of the brain tissue.

Q. Did you notice any deterioration of this man's brain in his testimony today as he answered the questions put to him by his lawyers? Didn't he seem to recall everything that happened since the accident and prior to that time?

The Deputy Commissioner: I don't think he was here.

By Mr. Bowen :

Q. Didn't you hear him answer the questions that occurred here? A. Yes, but was everything that he said the truth? I don't believe I heard every word of it.

Q. He answered the questions of counsel regarding what happened prior to the accident and subsequent thereto.

The Deputy Commissioner: This is purely argumentative.

By Mr. Bowen:

Q. I say, you have not taken that into consideration? A. I have.

Q. Taking all those things into consideration, you have arrived at the decision that the man is disabled? A. Yes.

Q. What do you mean by disabled? A. That he has lapses of memory, that he is undependable—judging from that automobile accident—

Q. (Interposing) Could he work in an office? A. If the boss wanted such a man to work for him, yes.

Q. Do you know of anything this man has forgotten as to the work that he did after the accident? A. Do you mean whether or not he has forgotten anything?

Q. Yes. A. What was the question?

The Reporter (reading):

"Do you know of anything this man has forgotten as to the work that he did after the accident?"

By Mr. Bowen:

Q. That he was called upon to do, that you know of? A. No, I don't know that.

Q. Would this man, in your opinion, be able to
115 take a job as a watchman? A. I don't think so. I
wouldn't want an absent-minded watchman on my
place; would you?

Q. I would be very glad to put him on, judging from his
appearance on the stand.

Mr. Smith: I object to this argument by counsel.

The Witness: It is a matter of opinion.

By Mr. Bowen:

Q. I ask you what work this man can do. According
to you, there is nothing that this man can do. A. He could
do some work for a period of time, then he would have
one of these spells, and what would happen, I don't know.

Q. Has he tried to get work? A. I think he has.

Q. What work has he done since the accident? A. Driv-
ing the car, and you see what happened.

Q. Does it follow that because a man has an accident
that he can't do any kind of work? A. That type of acci-
dent, yes.

Q. How do you know that?

The Deputy Commissioner: Let us get along with the
case.

By Mr. Bowen:

Q. You are testing his disability by the fact that he is
unable to drive a car? A. No, that is only one
116 thing.

Q. What else have you taken into consideration
that this man can do that is within his mental capacity? I
ask you to mention something that this man can't do
within the range of his mental capacity. A. What he can't
do?

Q. Besides being unable to operate an automobile. A. I
don't think that he could write a book. I don't think that
he could be a business executive, if you want a list of all
the things that I think he can't do—

Q. (Interposing) I just want to show—

The Deputy Commissioner (interposing): This line of
questioning won't help me with this.

By Mr. Bowen:

Q. I am asking you now, what hallucinations of perse-
cution has this man had? A. In these hallucinations of per-

secution, you have to take what the patient tells you. He is anxious and he thinks that people are following him, calling him names, persecuting him, and making life miserable for him. He has jumped out of a window—I never saw him jump, but his wife has told me that.

Q. Have you gone back into this man's history to see whether or not he has been an alcoholic? A. I have no such history.

117 Q. Did you ask him about it? A. I believe I did.

Q. Did you go to his wife and ask her what he did with his spare time? A. It wasn't necessary.

Q. You say that it isn't essential to find out what he did with his money? A. His wife has told me that he has gone to the store and come back with less money and said that he lost it.

Q. You didn't think that it was of sufficient importance to inquire from his wife or the patient what happened prior to the accident? A. As far as I knew, he was all right.

Q. Did you make such inquiry? A. Yes, I was told that he went to bed early, and so forth, and that he got restless, but I didn't inquire very deeply.

Q. Did you ask him about intoxicating liquors? A. Yes.

Q. What did he tell you? A. He said that he would take a drink, but he didn't drink very much.

Q. I thought you said that you didn't inquire into that. A. You have me so confused with your questions—Have I asked him that? That is a routine thing to ask a
118 patient.

Q. What was his answer? A. I think his answer was that he took a drink occasionally, or something like that.

Q. Would his use of alcohol to excess produce any such symptoms that you find in the patient at the present time?

Mr. Smith: I would like the record to show that thus far there has been no evidence to show that he was a drunkard.

The Deputy Commissioner: The objection is noted.

Mr. Bowen: We expect to follow that up with evidence, however.

The Deputy Commissioner: If you can't answer the question, say so.

The Witness: I can't answer it.

By Mr. Bowen:

Q. What sort of man do you think the patient was before the injury that he told you about? What was his capacity for work? A. Very good, from what he tells me.

Q. For what kind of jobs? A. He has had several jobs. He worked in a restaurant, and he worked on a farm at times.

Q. Could he work on a farm at the present time? A. He could probably do some work.

Q. Could he work in a restaurant at the present time? A. I don't think so.

119 Q. What would you say he was fit for prior to the accident? A. I can't answer that question.

Q. Without knowing what the man's capacity for work was prior to the accident, how are you able to say what his capacity for work is at the present time? A. I only know from what he tells me.

Q. What kind of treatment have you prescribed for him? A. As I said, I prescribed sedatives for his nerves.

Q. Is that all? A. And I have sent him to a neurologist.

Q. That is all you know about it? A. What do you mean?

Mr. Bowen: That is all.

(The witness thereupon was excused and retired from the witness stand.)

Thereupon **Dr. Irving J. Spear** was called as a witness for and in behalf of the claimant, and being then and there duly sworn by the Deputy Commissioner, assumed the witness stand and, upon examination, testified as follows:

Direct Examination

By Mr. Smith:

Q. Will you state your full name, please, Doctor?

A. Irving J. Spear.

120 Q. You are a member of the medical profession?

A. Yes.

Q. For how long? A. For thirty-eight years.

Q. Will you tell us briefly what was the course of your education, and in what lines you specialize? A. I graduated from the University of Maryland in 1900.

Subsequent to that time I became assistant resident physician at the insane department of the Baltimore City Hospital. I then went abroad and I studied in Germany, Austria, and England, for a year. I returned and I became the general resident physician in the insane department of the Baltimore City Hospital.

Subsequent to that time I did general practice, and I was attached to the neurological department of the University of Maryland.

From 1905 up to the present time I have been associated with the University of Maryland as an instructor, and at the present time I am a professor of neurology and neuropsychiatry at that university.

I am either visiting or consulting physician in all the hospitals in Baltimore, and I am consulting physician to the Federal Court of the City of Baltimore, attending physician and neurologist, and I am assistant neurologist at the United States Public Health Hospital in Baltimore. I am also consulting physician in some of the hospitals out of the state of Maryland.

I have written a text book on nervous and mental diseases, published different articles in medical journals, and I contribute many articles on mental diseases to various publications.

Q. Then for almost thirty-eight years you have specialized in neuropsychiatry? A. For over twenty-five years, at least.

Q. As well as in brain injuries and such treatment? A. Yes, sir.

Q. Are you at this time connected with Johns Hopkins University? A. Formerly I was. I was one of the assistants at the Phipps Institute, which is the neurological department of Johns Hopkins.

Q. You have had professional experience covering numerous mental diseases and all kinds of mental cases? A. Yes, sir.

Q. Doctor, were you requested by Doctor Anderson of the Marine Hospital of Baltimore to examine this man, Mr. Kicklighter? A. Yes, sir.

Q. As consultant in that case? A. Yes, sir.

122 Q. Do you recall the date of that examination?

A. February 19, 1938.

Q. Do you know how long he was confined at that hospital? A. He was in the hospital from February 15 until March 1, 1938, a period of two weeks.

Q. Did you see him at any other time besides February 19? A. There was only one examination.

Q. Will you state to us, please, briefly, what your examination consisted of? A. The examination consisted of having him give me a complete history of his complaint, all about it, how he felt, everything in great detail. I asked him, among the first things, the duration of his trouble, how he was getting along, and how he felt. I then inquired into his history, asking him a number of questions about his family, his mother, his father, his brothers, and his sisters. I asked him where they were, how they were getting along, and so forth. Then I obtained from him a history of his past life. I had him tell me what illnesses he had as a child, his occupations when he was young, where he had worked and where he had traveled. I asked him what injuries he had and what illnesses.

He spoke of the work at the Potomac Electric Power Company, I think it was. I asked him how long he had been married, the name of his wife before she married him, the number of children they had, and how his
123 wife got along. Then I asked him why he quit work, how he liked the work, how he was feeling, and I went into all those things in great detail.

I enquired especially as to his educational qualifications, where he went to school, what school, how far he went, and so forth. He told me that he didn't finish high school.

Then I went into his industrial history. The first position he had, where he worked, how long he worked in the various places in which he had been employed up to the very day that I saw him; I found out just exactly what he had done.

When that was completed, I made a complete physical examination of him.

Q. Let me ask you, before you go into that, Doctor, how this man responded to your questions? A. The man responded very slowly. The examination which usually should take about an hour, in this man's case, lasted well over two hours. His responses were very slow, it was difficult to hold his attention on the question, and he would

frequently forget, and the questions would have to be repeated. He frequently became confused, and he had to have the questions explained to him so he could understand them.

His memory and his replies were fairly accurate. His calculating ability was found to be very deficient. We then went into the man's mental examination.

Q. Now, what did you find in his physical examination? A. The complete physical examination was made, and in all respects, with the exception of the man's teeth, and the fact that he was slightly undernourished, the man appeared to be in good health, physically. All tests were essentially negative, physically, with the exception of his teeth, which were not very good.

We found that his reflexes were defective. When we completed his physical examination the neurological examination began. We tested the reflexes of the nerves in various parts of the body, and performed various tests, but there, again, with the exception of certain reflexes which were defective, his neurological examination was essentially negative.

Then the mental examination was made. The mental examination showed an individual who was usually confused, who would usually go into periods of despondency and loss of memory. He had more or less hallucinations regarding persecution. He thought that people were following him, talking to him, calling him peculiar names, and threatening him. He had difficulty in concentrating, and it was with great difficulty that I could get many of his answers.

After we had finished with those things, his wife was interviewed. She verified many of the statements that he made as to his condition and as to prior occurrences. She said that at one time he found himself in Florida, and that at another time he found himself in Georgia, I think it was

Savannah—I have these names all in the record, though, and she spoke of his peculiar actions while there.

I had x-ray tests made. First we had x-ray plates made of the head to show whether or not the skull had been fractured. These x-rays were negative. We then came to the conclusion that the man must be suffering from some loss

of tissues of the brain, but unless we could take out some of the fluid from around the brain and replace it with something that would enable an x-ray to cast some shadow, we couldn't progress far. Consequently, we injected air into the spinal column, having previously withdrawn 80 c. c.'s of fluid, and we took x-rays of the brain then.

These x-rays showed a very definite wasting of the brain substance and one ventricle of the brain was very much larger than the other, which was the result of the wasting away of the brain substance.

Based upon the history and the mental examination and the x-rays, which we have taken, I came to the conclusion that this man's condition, this man's difficulties in concentrating, this man's slow reactionary time is the result of the wasting away of the brain which is sometimes called encephalatrophy, which is a wasting away of the brain substance.

If the history of the case was true that he was injured by this air hose, and that before that time, according to the history of the man that he gave me, he was a very energetic and active man—the history shows that
 126 the man has been very ambitious, that he did his best to get away—that the wasting away of the brain was the result of the injury he had.

In this particular kind of an injury, a concussion, there is what is known as a diffuse concussion which usually results in very small hemorrhages, very small breaks in the small vessels with very small hemorrhages. These hemorrhages, instead of being absorbed, result in scar tissue which, of course, contracts and results in the reduction of the substance of the brain.

The x-rays we took show that one side of the brain is larger than the other, you can see that. The plates are there. If the history is true, it is my opinion that the wasted brain, the cells, the slow reactionary time, the pains and headaches, and so forth, were the direct result of the injury.

I can say this, that these things are permanent conditions. Brain tissue never replaces itself. Whatever has caused this condition has caused a permanent condition. If he told the truth when he gave the history of his school progress and of his industrial progress and of the pro-

gress which up to the time of the injury he made, I would say that the injury was the cause of the brain condition which he has at the present time.

Q. Now, Doctor Spear, would that condition be-
127 come manifest immediately after the accident? A. It would not. The thing that would become manifest, if he is telling the truth, is that he would have headaches, dizziness, and that they would remain.

He said that he went to the hospital, then that he ran away from the hospital and went home. A normal person after he was injured and had gone to a hospital, would receive the cooperation of the doctors in the treatment of the injury. The doctors would want to keep him in the hospital for observation.

These processes of abnormal reasoning gradually got worse and worse in this case. If the history is true that he gave me of his industrial progress, that after the injury he was willing to take any kind of job that he could get, and give a consideration to the fact that he was as co-operative as he could be, it is my opinion that the injury was the cause of the present condition.

Q. With reference to the small hemorrhages that you referred to, let me get that clear. A. That would be about that wasting condition of the brain that he had.

Q. How could that be caused? A. By the shaking up of the brain. Each time that you hit your head you have a concussion, no matter how easily you hit your head.

Sometimes it is very slight, and sometimes it is
128 more severe. Sometimes it produced unconsciousness immediately and at other times there may not be unconsciousness for hours. I have seen patients with a history of having struck their heads, go right on apparently all right, but within an hour or so afterwards, they become unconscious, have convulsions, and sometimes they die. These hemorrhages of which I spoke are very small diffuse hemorrhages. I have seen people who have been riding horseback and who have been thrown off on their heads, get back on the horse and ride for a quarter of a mile and then fall off, go to the hospital, and frequently die. One such lady was thrown from her horse, just as I said, and rode for a quarter of a mile; then she fell off unconscious, and she died.

Q. You have some x-rays with you?

The Deputy Commissioner: I don't want to see the x-rays. The doctor has described it. However, if you want to have him describe the x-rays, you may.

Mr. Smith: That is perfectly all right. I will proceed.

By Mr. Smith:

Q. In your opinion, you think that this man is disabled?

A. I know him to be disabled.

Q. Would you say that that disability is the direct result of the injury of May 24, 1935? A. If the history is true, it is due to the injury.

Q. What percentage of disability would you say
129 that he has now? A. I estimate that disability at about 75 per cent, because this man just works slower than the average individual. He has to be kept working, some one has to be watching him all the time. I think this man is unreliable, but with a patient employer, a sympathetic employer who wouldn't mind watching this man, and whose system wouldn't be particularly upset if this man couldn't work every day during the week, under such supervision, I think it would be possible for this man to do some sort of work.

Q. Under constant supervision? A. Yes, by a sympathetic person who would want to help the man.

Q. I don't know how much of Mr. Kicklighter's testimony you heard today, but I believe you heard some of it, and I think you saw the witness on the stand. A. Yes, sir.

Q. From what you observed today, and from what you have heard today, has your opinion changed? A. It has not.

Mr. Smith: You may inquire.

Cross-Examination

By Mr. Bowen:

Q. Doctor, you have laid special emphasis on the fact that if the history given to you by the patient is
130 true, your conclusion would be that the injury resulted in the condition. A. Yes, sir.

Q. What kind of man did you understand this man to be prior to his accident? What I mean is what kind of a place in society did he occupy? A. This man impressed

me as being a very industrious, ambitious, conscientious individual. He didn't finish high school, and when he was going to high school he had to work on the farm helping his father. He gave me a history that showed that the man was ambitious. He told me that he worked for the Blackoline Manufacturing Company before he was twenty-two years old, and that he did all he could to get ahead. He also said that he worked for some people in Hagerstown on some sort of dairy farm.

I verified that, because I know some people in Hagerstown, and they told me that the dairy of which he spoke was run by some lady. He told me her name.

Q. Did he tell you anything about being in an automobile in Hagerstown one day and driving the automobile into the ditch? A. No, sir.

Q. Did he tell you anything in that history about having gone to work a week after the accident and operating a crane just as he had formerly done? A. The question you gave me before was as to what kind of man I
131 thought he was.

The Deputy Commissioner: He hasn't finished the answer.

Go ahead, Doctor.

The Witness (continuing): He was willing to take work as a cook in a restaurant, and then he got some books from the library to teach him something about electricity. He studied electricity from these library books and took an examination for a job with the Potomac Electric Power Company and got the job that winter. He didn't have any practical knowledge about the work except what he could get from the library, but he managed to get that job and keep it.

By Mr. Smith:

Q. What kind of work did he appear to you as having been able to do prior to the accident? A. I went into his employment in great detail with him, and he told me that he liked the work, and he told me what it was about. As I understood him, he was running some sort of digger or a rigging machine on which there were two or three levers to be worked, and there was some sort of a shovel attachment on it like a steam shovel that he would manipulate with those levers, and he had a few men under him.

Q. How many men did you understand worked with him on that job? A. Two or three men.

Q. Would that sort of work indicate to you that
132 a man would have to have considerable intelligence in order to it. A. No, a man without very much intelligence could do that, provided—

Q. (Interposing) What job did he tell you that he had that required such mental efficiency? A. He said that he worked on one of these machines, and any man who goes up the ladder that far with as little schooling as he had must be above the average.

Q. Now, tell us some job that he had that would require great intelligence. I think that it is fair for me to ask you upon which you base your conclusions that he is above the average? A. He impressed me as a man above the average as far as industry was concerned, that he had been a responsible man, and an ambitious man.

Q. Did you ask him anything in connection with his use of alcohol or his habits? A. Yes.

Q. What did he tell you? A. I asked him if he drank and he said he did, but not much.

Q. Suppose that information should be wrong and that he had been addicted to liquor, would that make any difference in your opinion?

133 The Deputy Commissioner: What do you mean, before the injury?

By Mr. Bowen:

Q. Before the injury, yes. A. No.

Q. Does the excessive use of alcohol have any effect on a man's brain? A. Eventually it will, yes.

Q. Would it produce any such results as this man has? A. After many years it might.

Q. Did you inquire when you talked with his wife about what he did with his earnings? A. His wife stated—I have a note here—that she hadn't noticed any abnormal behavior on his part due to intoxicating liquor.

Q. So that, if that should be wrong information, would that have any effect on your conclusions? A. If everything that I understood about his history is wrong, that he is not a steady worker, that he was addicted to alcohol, I would say that this injury didn't hurt him any.

Q. If it can be shown in this case that this man had complained of headaches and dizziness for most or all of his life, dizziness and headaches, what effect, if any, would that have upon your conclusion? A. That he might have had the condition before the injury.

134 Q. Before the injury? A. Yes.

Q. You stated in this previous narration made by the patient, that the doctor wanted him to stay in the hospital, but that he ran home? A. That is correct.

Q. Will you refer to that? A. Yes.

Q. Will you tell me whether or not the information that he gave you was that he ran home after being in the hospital for this injury or for something else? A. I have that note here. (Reading)

“Question: Where did they take you after you were struck?

“Answer: They took me to Emergency Hospital in Washington.

“Question: How were you taken there?

“Answer: I don’t know.

“Question: How long were you there?

“Answer: They told me that I was there four days.

“Question: How did you get home from the hospital?

“Answer: I don’t know. I tried to find my machine, but I couldn’t.

“Question: Did you leave Emergency Hospital by yourself, or was some one with you?

135 “Answer: I only know what was told me. They said that my wife came down on Sunday, and they tried to make me stay there, but I wanted to get out and I called Doctor Morhart. Doctor Morhart didn’t want to let me out, but I said that I was going to go out without my clothes on, and they then let me out.”

Q. Did you hear the testimony of the patient that the second week after the accident that Doctor Morhart drove him in his machine to K Street? A. I wasn’t here then.

Q. Then, in your narration of past history, does that appear. A. No, sir.

Q. If he was taken, as the witness says he was, by Doctor Morhart on the second day he was in the hospital, then your information that he gave you about running away would be wrong? A. Evidently so, yes.

Q. Then, any statement that you have that the doctor wanted him to stay in the hospital for further treatment, and that he didn't stay, if that is not correct, then any of the other facts that he stated to you may be wrong? A. He said that that is what his wife said.

Q. Yes, but he testified here himself today. A. Yes.

136 Q. In the past history given to you by this patient, did he tell you anything about a week after the accident going back to work for the same company and performing the same kind of work that he had been performing up to that time? Is that in your history? A. He says there (reading):

"Question: How long were you away from work?

"Answer: One week.

"Question: Then did you go back ?

"Answer: Yes.

"Question: How long did you work?

"Answer: For about two weeks, I guess.

"Question: Did you have any trouble on that work?

"Answer: Yes, I did. I had trouble with my head.

"Question: Could you do the work?

"Answer: No, they wouldn't give me the work to do.

"Question: What did you do?

"Answer: I just messed around.

"Question: Did you have any accident during the next two weeks?

"Answer: Yes.

"Question: What did you do next?

"Answer: I worked with a pick and shovel."

Q. Do you know whether or not, Doctor, that during the week after the accident he went back to performing the same kind of work? A. He said that he
137 went back to work, and I asked him what kind of work it was, and he said that they wouldn't give him the work to do.

Q. His statement today is that he performed the same kind of work for five months after that on the compressor, so that would be another misstatement upon which your conclusions would have been based.

Now, have you anything in that past history about the patient going back to work for the W. P. A. climbing poles? A. Yes, sir.

Q. What did he tell you about that? A. (Reading)

"Question: What did you do then?

"Answer: I went back to work.

"Question: What kind of work?

"Answer: W. P. A.

"Question: What were you doing there?

"Answer: I was a linesman.

"Question: Did you have any trouble?

"Answer: I was putting up wire on the posts and I got dizzy, and I don't remember what happened.

"Question: Then what did you do?

"Answer: I don't know.

138 "Question: When did you know anything after that?

"Answer: I was in Florida.

"Question: How did you get there?

"Answer: I don't know.

"Question: Do you remember what month it was when you found yourself in Florida?

"Answer: No, sir.

"Question: Do you remember what year it was?

"Answer: No, sir.

"Question: How did you know where you were?

"Answer: I was wondering where I was and asked some people and they told me.

"Question: You don't know how you got there?

"Answer: No, sir.

"Question: Did you look for any work there?

"Answer: Yes.

"Question: Did you get a job?

"Answer: No.

"Question: How did you look, like a tramp?

"Answer: Worse than that."

Q. If that information that he gave you is not correct, then the testimony of the patient today—that would affect somewhat the history upon which you based your opinion; would it not? A. I would say this. It depends entirely on the truthfulness of this man. This man is just as apt to give you one answer today and an-
139 other one tomorrow about the same thing. He forgets very easily what he said the day before, and he loses his memory from day to day. I don't know just what is true and what isn't true.

Q. You gave an instance of a man falling off a horse.

A. Yes.

Q. And that later on he had convulsions and things of that sort. Did you hear any history given by the patient in this case or from the interne who was present regarding this case being the same as the sample you gave me?

A. Doctor Burnstein? Yes, I heard that.

Q. This is an entirely different sort of case from the one that you cited. A. Not necessarily.

Q. This case is comparable to that case? A. Yes, perfectly comparable. In this case the man may have been perfectly well and sustained a concussion with the same symptoms.

Q. What symptoms? A. Dizziness, headaches, haziness, as the doctor says.

Q. Could he have been conscious on that day? A. Perfectly so.

Q. Conscious on the following day and for the next eighteen months after that? A. Yes, sir, absolutely. A man may have a cerebral concussion without any
140 unconsciousness.

Q. Might he have these conditions due to former habits? A. Yes, sir.

Q. And he might have it from other things? A. But he doesn't have other things. He doesn't have syphilis, he doesn't have arteriosclerosis, he doesn't have high blood pressure, and the only other thing that could possibly be considered as a cause of this would be chronic poisoning, such as alcoholism.

Q. Assuming that the evidence would be that the man always was subject to dizziness and headaches prior to the accident, what effect would that have on your conclusion? A. That the injury would make him worse.

Q. To what would you contribute this condition? A. I couldn't find anything wrong with the man.

We examined his urine, we took x-ray plates, we examined every part of his body, and with the exception of his teeth, he is as healthy as any man here. The spinal fluid that we tapped showed that he had some condition in his brain which was causing a wasting away of the tissues. The protein, that is what you get when the brain tissues are being absorbed, was nearly twice as high as in the average man.

Whether that is due to a long chronic poisoning such as alcoholism or some other cause—

Q. (Interposing) It could be alcoholism? A. Yes.

141 Q. You spoke of this man being able to perform some work, for instance on a farm if he had a sympathetic, cooperative employer. You don't mean to limit it just to that particular thing, do you? A. Light physical work, yes, under supervision, because he is not, in my judgment, dependable or reliable. He must work somewhere where he wouldn't injure anyone or himself if he stopped working for a day or so.

Mr. Bowen: That is all.

Examination in Chief

By the Deputy Commissioner:

Q. Doctor, from your entire knowledge of this case now, and with the history that you yourself obtained when you made the examination, and from all that you heard today, are you still of the impression that the cause of the present condition is the injury that he sustained in May, 1934?

A. This man is a young man. If this man came to me in my office, without this case having come up at all, I would say that his injury is the cause of his condition. Only alcohol would cause it besides an accident, and alcohol usually shows up in the man after many years.

I would say that, assuming that the man was of average intelligence before the injury, having gone to work regu-

142 larly, it appears from the history that he did, I would say that something happened to his head

when he was struck by that air hose, which has brought about these permanent changes that the man has.

Q. From your observation, now, is there any suggestion of any lack of good faith or malingering in this man?

A. He answered all my questions cooperatively, and he made no effort to evade any of the issues.

He didn't lie, I don't think. Then he had certain physical signs—after all, a person can't fool these x-rays, he can't bring about these changes in the spinal cord, and you can't bring about these changes in reflexes. They are there, definitely.

I think this man is suffering from a diseased brain, and whether or not it is due to an injury or whether it is due to

the life that he has been living and his habits, I don't know, but in my judgment, it is due to the injury. I certainly have no interest in the matter one way or the other.

Q. What is your opinion with reference to the effect of brain injuries on a person's desire for alcohol? A. This is what may happen: People who have been reasonably sober before an injury, after an injury become abnormally addicted to it and afterwards become habitual drunkards. On the other hand, a person may lose his taste for it after a brain injury. There is no hard rule about it. The same thing happens in morality. I have seen persons who are admirably fine fellows receive brain injuries, and then they become more or less wrecks. It may work both ways. Head injuries in people who are habitual drunkards sometimes result in the persons not caring for a drink anymore. It just seems that something is changed in the brain.

Q. What would you say about a person's ability to absorb alcohol after a brain injury? A. It always decreases. After a brain injury the person always becomes less able to carry their liquor.

Q. Doctor, have you heard the testimony today that since this man's examination and treatment in the Marine Hospital he has improved? A. Yes.

Q. Can you tell us to what that is due? A. Yes, sir. We withdrew a lot of this fluid which was apparently pressing on his brain, and as soon as that pressure was eased—I wasn't there, I didn't do it,—but they said that he was almost an entirely different man.

I would advise this man to go to one of the clinics in this city periodically and have spinal punctures done to relieve that pressure.

Q. Would that treatment that you suggest improve his condition or simply relieve him from pain? A. It might result in definite progress, and it might improve him a little bit.

144 Q. You still believe that there would remain some permanent disability? A. Yes, but I would rather watch this man for six or eight months. I think that he should have spinal drainage, and that would certainly bring him some relief.

The Deputy Commissioner: That is all.

Mr. Bowen: I would like to ask the doctor one or two more questions.

By Mr. Bowen:

Q. What constitutes malingering in your opinion? A. A man who purposely misleads, misrepresents, knowing all the time that he is doing that.

Q. Is there any test that you can give a man to show whether or not he is malingering? A. We have definite tests whereby we can tell whether a man is, for instance, actually paralyzed in one arm. If he is paralyzed, we can tell it by the reflexes that he has. There are certain tests that we have that will show it.

Q. What tests could you give a person to show whether or not he is honest or dishonest? A. There is no test.

Q. What tests could you apply to the patient to tell whether or not he is enlarging upon his injuries or his situation or whether he is telling the truth or not? A. My impression is mostly by observing the man and the way
145 he answers the questions.

In this case the man answered all the questions cooperatively, he didn't try to avoid or evade any of the questions, but, of course, I may be mistaken.

Q. Suppose your statements on the stand are at variance with other statements that he has made? A. That would go along with his mental condition perfectly well. A mental condition such as this is often reflected in that way.

Q. Did you make any of these tests to show whether he was honest in his claims? A. I had no reason to. He didn't tell me that he was paralyzed, weak, or sick. It wasn't necessary for me to make any tests about it.

Q. Have you ever testified in cases where the claimant said he couldn't work, then, after he had settled, he was perfectly all right? A. I have testified on both sides of that question. Sometimes I have testified that a man was ill, and the man got a verdict; then he would be well, and it would appear that I was wrong.

On the other hand, I have testified that a man wasn't ill, and he still got a verdict and he continued to be ill for some time after that. We all make mistakes.

Q. You have no real way of knowing? A. Whether
146 or not a man is telling the truth, there is no test for that, and we all make mistakes.

(Thereupon the witness was excused and retired from the witness stand.)

Mr. Smith: I have no further witnesses today.

The Deputy Commissioner: Is that the claimant's case?

Mr. Smith: We have other witnesses, and one more medical witness.

The Deputy Commissioner: I don't know whether you want to put him on today or not. Do you want to put Doctor Stout on, Mr. Bowen?

Mr. Bowen: I would rather wait until the claimant closes his case.

The Deputy Commissioner: If he is willing to stay, I will hear him gladly. I don't want to give anyone the impression that I won't hear this medical testimony, but if you want to let it go over, it is up to you.

Mr. Bowen: I would rather wait.

The Deputy Commissioner: The case is continued for further evidence to be produced by the claimant and the employer.

(Thereupon the instant hearing was concluded.)

* * *

147 I hereby certify that the foregoing is a complete and accurate transcript of the shorthand report of the proceedings had and testimony presented at the described hearing, made by C. Bruce Clark, a competent shorthand reporter and a member of my staff.

H. S. MIDDLEMISS,
Official Reporter.

84 POTOMAC ELEC. POWER CO. VS. F. A. CARDILLO ET AL.

148 Endorsed: Filed Jan 20 1939 Charles E. Stewart,
Clerk

United States Employees' Compensation Commission

District of Columbia Workmen's Compensation Act

Case No. 26-827

RAYMOND W. KICKLIGHTER, *Claimant*,

vs.

POTOMAC ELECTRIC POWER Co., *Employer*.

Self Insured.

Transcript of Testimony at Hearing Held

July 28th, 1938

Before Frank A. Cardillo, Deputy Commissioner.

HARRY KRETT

Reporter

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150 United States Employees' Compensation
Commission Before Frank A. Cardillo, Deputy
Commissioner District of Columbia Workmen's
Compensation Act

Case No. 26-827

RAYMOND W. KICKLIGHTER, *Claimant*,
POTOMAC ELECTRIC POWER Co., *Employer*.

Self Insured.

Transcript of Testimony at Hearing.

Pursuant to notice, this matter was heard before FRANK A. CARDILLO, Deputy Commissioner, U. S. Employees' Compensation Commission, at 908 G Street, Northwest, Washington, D. C. on the 28th day of July, 1938.

Appearances:

RAYMOND W. KICKLIGHTER,
Claimant.

S. PRESTON SMITH,
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151 Hearing in this case was called to order at 10:10 A. M. on July 28th, 1938, in the Office of the Deputy Commissioner, U. S. Employees' Compensation Commission at 908 G Street, Washington, D. C. The following proceedings were had:

The Deputy Commissioner: The hearing in the case of Raymond W. Kicklighter against the Potomac Electric Power Company is continued upon the order of the Deputy Commissioner. Has the claimant additional evidence to produce today?

Mr. Smith: Yes, Mr. Commissioner. But before putting on any evidence, I'd like to suggest a correction in the record. On Page 3 of the record it says, "that the hearing was upon the application of the claimant." I just want to

satisfy myself on that. It was my understanding that an informal opinion was given and that the employer requested this hearing; this formal hearing.

The Deputy Commissioner: Well, it did upon application of the claimant; actually, when a claim is filed the hearing may have been requested by the employer, but it is really the injured man who files the claim. It doesn't make much difference.

Mr. Smith: Now, if I may be permitted, I'd like to clarify a statement I made on Page 5 of the record in response to your question, "It is your contention," and so forth, at the bottom of the page. In response to the question "It is your contention that the disability began in 1937."

152 The Deputy Commissioner: Wait a minute. Is it your question?

Mr. Smith: It should be "Is it."

The Deputy Commissioner: It reads here "It is your contention." Is that what you said?

Mr. Smith: Yes; and my reply was, "It is my contention that it began in 1937, yes." Now, I want to clarify this in this way: That while we claim that Kicklighter was injured May 24th, 1935, that was a potential injury and progressive in its nature and did not become active to the extent of disabling him until, according to the testimony we intend to show, October or November of the year 1936. I just wanted the record to be clarified as to that, that the real nature of his injury was not known until the year 1937.

The Deputy Commissioner: All right. Who is the next witness?

Andrew F. Gillis, 33 North Calvert Street, Baltimore, Maryland, called as a witness on behalf of the claimant, being first duly sworn, testified as follows:

Direct Examination

By Mr. Smith:

Q. Dr. Gillis, you are a practicing physician? A. Yes, sir.

Q. Will you state briefly your education? A. I was graduated from the University of Maryland in 1904. and
153 later I served as resident physician in a large general hospital in Baltimore, the Mercy Hospital, for

three and a half years. I did post graduate study at the University of Berlin, in London and at Johns Hopkins University in Baltimore. In subjects of neurology, psychiatry, and psychology, and I have specialized in neurology and psychiatry for 25 years, approximately.

Q. Now, what hospitals are you now connected with? A. I am visiting neurologist or visiting neuropsychiatrist or consulting neuropsychiatrist to Mercy, South Baltimore, Baltimore Eye and Ear, Franklin Square, Saint Joseph, Townsend University Hospital, and I think one or two more.

Q. In your experience did you have or do any specialist's work in the U. S. Army? A. Yes, I served in the army as neuropsychiatrist first at Camp Mead as camp psychiatrist, and then in France I was consultant neuropsychiatrist, and on my return as chief of the neuro-surgery division of the large general hospital in Baltimore. I stood there about five months after my return from France.

Q. Are you the author of any textbooks or publications? A. I have written a number of articles in my specialities. I haven't written any textbooks, and I was a former instructor at Johns Hopkins for 14 years.

Q. Then in the course of your experience you have
154 had numerous occasions to examine head injuries and nervous conditions? A. Yes, a great many head injuries. Head injuries for the last 25 years. I was on the staff of one hospital where I was in very active service in this respect.

Q. Dr. Gillis, do you know the claimant, Raymond W. Kicklighter? A. I do.

Q. Did you have occasion to examine him and treat him? A. I examined him, but I didn't treat him. I examined him on February of this year at my office.

Q. Will you state the nature of your examination and what your findings were? A. My examination had reference, chiefly, to his nervous system, that is his nervous condition, his mental condition of which he might suffer. I did make a partial general examination. The examination first with reference to the physical side, we call the neurological examination, testing sight, hearing and smell and reflexes, gait and various other functions of the body, and then I made a mental examination that had to do with his

memory, presence or absence of hallucinations and some with regard to intelligence.

Q. Did you have an opportunity at that time to talk to his wife? A. Yes.

155 Q. And was that helpful in your examination? A.

Yes; a great part of it, of the history obtained was from his wife because I found it difficult to obtain it clearly from the patient because he was slow at answering and I had to repeat the questions at times.

Q. And since that time have you had an opportunity to talk to him? A. I examined him this morning with reference to his mental condition, yes.

Q. Now, at the time of your first examination, state what your conclusions were as to his condition.

Q. From the history of the patient given me as to his complaints, he complained of headaches, a dull feeling in his head, loss of memory at times, inability to work, fatigability, disturbed sleep, and taking that history into account and the findings of my examination, I came to the conclusion that he had a degenerative condition of the brain. I was not very sure of its nature but I felt it was organic in nature rather than a purely functional one. The picture seemed to fit into that of a neurosis, it was purely a functional condition. My reasons for saying that is this: That the history shows that this man has had at times periods when he was very much worse, when he apparently had lost his memory, periods of amnesia, and then, he stated, he was fairly clear and was able to do some work.

The morning I examined him he seemed to be particularly rather dull, slow, and suspicious. I was
156 watching him, following him, and thought there was a conspiracy of some type in regard to him. This morning he is much clearer. He talks better and has not that hesitancy and irritability that he had in February.

Q. Dr. Gillis, from his history did you learn that he was injured on May 24th, 1935, while working for the Potomac Electric Power Company? A. Yes; he, himself, told me that he had been injured, but he couldn't tell me the date. He told me he was injured while working for the Potomac Electric Power Company, but his wife actually gave me the date stating that it was May 24, 1935.

Q. And from your examination, at first, did you from his history learn of any other injury that he had had, which may have caused his condition? A. No, he said that while at work sometime later he became dizzy and didn't remember anything after that. He didn't know whether he was hurt or not. He said there was no previous injury at all stating he had been well before the accident, had no headaches, no illness of any kind, and had worked rather steadily for some time before. Approximately three years previous to that he worked in other places; in Hagerstown on a farm, and then he worked in a lunchroom here in Washington, and then down south where he lived or was born before coming north. He was hazy about time, dates, 157 and periods at times.

Q. Is it your opinion that his condition was caused by the injury he received May 24th, 1935? A. Assuming that the history that I obtained, that he was quite well for years previous to the injury, had no serious illness of any kind, had no other injury, and then that his symptoms came on following the accident, I was told, or he told me for instance, that he was unconscious for some time, his wife said it was about two hours following the accident. Following that he had headaches, severe headaches, some confusion, he went back to work but he used to come very tired and then later the condition gradually got worse, assuming that history to be true and taking into account my own examination, I believe that his entire condition is due to the injury.

Q. Do you think the claimant is disabled? A. Yes.

Q. To what extent do you think he is disabled? A. Well, he is almost totally disabled for this reason: In any kind of work which would cause strain or any kind of work in which there was any responsibility he would become worse and he might have a period of amnesia or a period of headache or some other symptom and, of course, that would be the end of his work. He is not capable of doing any heavy work, any work at all in which strength is re- 158 quired. He might do some light work if supervised carefully, if someone would see that he was carrying it on all right, and there was no mental energy required at all. But even there his judgment would be bad and he might make rather serious mistakes.

Q. I understood you to say that this morning he seemed to be much better? A. Yes; he himself says that since the removal of the spinal fluid at the Marine Hospital in February that his head feels better, his headaches have been relieved to a great extent. There were times when he had a thumping pain, he had some chronic pains, and he feels clearer mentally since then. Certainly he was much clearer this morning than he was when I saw him in February.

Q. Then in view of that would you say that he is still disabled? A. Yes.

Q. And at this time what would you say would be the extent of the disability? A. Well, just as he is today, perhaps he could do some work, but as I said a while ago it might bring back this condition. Any stress on his brain would aggravate the condition. It is a rather dangerous thing for him to do any heavy work where there would be a strain, like climbing, lifting, and so forth. At least that's my opinion.

Q. Now, Dr. Gillis, assuming that the claimant, 159 Raymond W. Kicklighter began working for the Potomac Electric Power Company July 18th, 1933, as a laborer doing pick and shovel work, then laying pipes, later driving trucks, and finally put in charge of a rigger and compressor machine which required considerable skill and responsibility, especially in making excavations in the street where intricate lines of cables, pipes, and so forth were already laid and in use to provide the various public facilities of the City of Washington, and that he discharged this duty satisfactorily for a period of about two years; and assuming that at the time that he began his work, July 18th, 1933, he was in a good physical condition, mentally alert, and continued and progressed in his work until May 24th, 1935, when he was injured by a severe blow to the head just above the right eye, when struck by the metal end of a compressor hose which was not properly connected and hit him with great force when the air compression was turned on, knocking him unconscious and requiring hospitalization until May 26th, 1935, that's two days, and continued medical treatment until he returned to work June 1st, 1935, nine days after the accident, that he continued to operate the compressor machine but suffered from headaches and occasional dizzy spells which gradu-

ally became more severe and the complainant resigned his position September 13th, 1935; that on October 22nd of 1935 he was employed by the W. P. A. doing work as a linesman, climbing poles, and stringing wire; that his injury became worse and he resigned his job February 20th, 1936, and took his family to Foley, Florida, where he tried to get work; that he returned to this city on April 6th, 1936, went back to work for the W. P. A. as a linesman but quit this job May 6th, 1936, and the following day was re-employed by the Potomac Electric Power Company; and that he began working as a laborer, at first, but was later allowed to operate the compressor machine and while so doing a cable was cut in digging a manhole and Kicklighter was later found unfit for the responsibility of his old job and thereafter put to work as a laborer; as such laborer while working over the water at Benning Power Plant laying pipes over the river his headaches and dizzy spells become so severe that he had to go to the Company doctor for treatment and was advised by the doctor to lay off a few days; and also that during the time that he was working at this job he was slack in his work, when late to work frequently; and sometimes stayed off work; when he returned to work after the doctor's orders to keep off because of illness he was sent to the office and discharged as an employee of the Potomac Electric Power Company, I think the date is August 7th, 1936; that he continued to seek relief from his suffering by applying to the Company doctor, that is the company's doctor, who sent him to an eye specialist and the specialist recommended glasses which he secured and used, but the glasses did not relieve the pain in his head and the dizzy spells and headaches; that he later secured employment as a laborer and truck driver on a W. P. A. project at Bolling Field, D. C., that was August 31st, 1936; that he continued to suffer from severe headaches, dizzy spells and spells of insomnia which seemed to get worse and he suddenly quit this job on November 16th, 1936; and at this time he secured an old truck and he took his wife with a two weeks old baby and his other two small children with his personal effects and left the city in the old truck, at a time when it was cold, and inclement weather; and he took them into Savannah, Georgia where he looked for work and did get

some work for a time in a factory in Savannah, Georgia but suddenly quit this job and later with the help of the Salvation Army he and his family were sent back to this city where he was put on relief in the month of March, 1937; that his mind seemed to be a blank as to the trip to Savannah Georgia, and on his return to Washington the relief workers sent him to the clinic at Emergency Hospital where he was treated and found to be suffering from an injury to his brain; that while on relief he tried to get work and on one occasion was hired to start work at an appointed time but when his wife sent him to work he returned about 30 minutes later not knowing what he had gone out for, and on another occasion in January, 1938, the claimant worked for two or three days as a chauffeur for a lady and while

162 driving the automobile in a crowded street downtown in Washington he had a spell, one of these spells came over him, and he had an accident which almost caused serious injury to innocent persons who were on the sidewalk where he drove the car; that this man is still on relief; that since this accident in January 1935 he was treated and examined at the Marine Hospital in Baltimore where there were also X-Rays taken of his brain; that these X-Rays show an atrophy for a wasting-away of the brain tissue; that one lateral ventricle is much larger than the other; that he is still unemployed and he is still on relief; now, Dr. Gillis, in your opinion from the facts just stated, is this man still disabled?

Mr. Bowen: One minute before you answer. Mr. Commissioner, in this hypothetical question Mr. Smith assumes two sets of facts which I don't understand the record shows. One of them is: My recollection of the testimony is that this man Kicklighter testified that the cable was cut and he undertook to put that blame on him, and he, Kicklighter, quit himself. The second one, in the assuming facts put in this question to Dr. Gillis, he recites that he was kept away from work by a physician. Now, I don't know where that appears in the record.

The Deputy Commissioner: Your objections are noted. You may answer, Doctor.

163 Mr. Bowen: We object to the question on those grounds; it is not as stated.

The Deputy Commissioner: Of course, you understand that whenever you agree to put on medical witnesses in advance of lay witnesses we can't always get a complete record of the facts. I don't know whether Mr. Smith has other witnesses to present or not, but in any event the facts contained in the hypothetical question will be considered when determining the question of course, as related in the opinion of the doctor which he renders.

Mr. Bowen: The only thing I understand is that stated in the record. Now, all I can do is go by that. The objection is that the hypothetical question put to this witness is not in accordance with the facts proved.

The Deputy Commissioner: All right; objection noted.

Mr. Bowen: And later to strike it out if he doesn't supply those facts.

The Deputy Commissioner: Well, any request to strike out any evidence, of course, will have to be made.

Mr. Bowen: If the case should go to any jurisdiction I want the exception shown.

The Deputy Commissioner: All right.

Dr. Gillis: Assuming these facts to be true I believe this man is still disabled.

Mr. Bowen: I move, Mr. Commissioner, for the
164 record the answer of the witness be stricken for the reasons previously noted.

The Deputy Commissioner: Denied.

Mr. Bowen: Exception.

By Mr. Smith:

Q. Do you think that his condition as stated is the result of his injury to his head on May 24th, 1935? A. Yes.

Q. What would you say was the extent of disability? A. Well, he is almost totally disabled. I don't know of any occupation that he could follow in which he would be likely to succeed. He might work for a short time fairly well, but I really believe that his judgment is bad. New symptoms would develop if he attempted to work and he would be discharged in a comparatively short time. That in a sense he is practically totally disabled in the sense that he wouldn't be able to hold a position. However, theoretically, some work might be found for him; something that would be easy to do where he was under super-

vision, the foreman or boss understanding that he was handicapped and allowing for his difficulty. Of course, that is a theoretical consideration and one that is rather hard to work out in our present industrial system. I would certainly say that he is 75 or 80% disabled for any kind of work except perhaps for selling pencils or newspapers or something like that, but certainly nothing like any kind of work he did in the past.

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Cross Examination

By Mr. Bowen:

Q. Dr. Gillis, your testimony in this case is based entirely upon the history which was related to you by the complainant, Mr. Kicklighter and his wife? A. Yes.

Q. How much of it is dependent upon what Mrs. Kicklighter has told you? A. Very little; I only asked her in regard to specific dates such as the date of the injury. For instance, he told me he was hurt in the Spring of 1935. He wasn't sure of the date so I turned to his wife and asked her for the date. I did that again on two or three other occasions asking her for some specific information which really had no bearing on my opinion but made the record a little more definite and complete. I did ask for his reaction around the house such as to how he treated her and a few questions of that nature but that merely again only bore out what I found from my examination, what I would expect to find. So her testimony or evidence was of very little value as far as my opinion was concerned.

Q. Let's see then. Then your opinion is based entirely on the history of the patient? A. And my examination, of course.

166 Now suppose the history given to you by this patient is untrue and not in accordance with the facts, to what extent would that affect the conclusion you reached? A. Well, it would depend entirely upon which way it is untrue.

The Deputy Commissioner: What part of the history are you referring to?

Mr. Bowen: The whole history of this case taken as a whole.

The Deputy Commissioner: The whole history is untrue?

Mr. Bowen: As a whole, as to this man at one time prior to the accident being free from the conditions complained of now. Let's assume, for instance, he had all his life been more or less the type of individual that he now appears to be; that is to be an unhappy individual, a morbid individual, never satisfied with himself, his job, or his health, or things in general. If those facts were established, would that have any bearing upon the conclusion that you have reached that the condition which the man now is in due to those accidents in 1935?

Dr. Gillis: Now, I would like to answer this last question but you are assuming that all the evidence is untrue.

Dr. Bowen: I mean substantially, I don't mean that there could not be some truth in some of these things. He had an accident, there is no doubt about that. I mean
 167 as to the truth of his statement to you that he never had substantially the condition that he now complains of, prior to this accident. A. Oh, I would try to attempt to answer that but, of course, the other is an entirely different question where you ask me to assume all the evidence is untrue. Assume his condition previous to the accident, well if we assume that he had symptoms which you relate, that he was despondent, irritable, and so on, then I would say probably that the injury aggravated that; I would say he is probably now worse than he was previously.

Q. In your experience of examining types of individuals, have you found individuals suffering from similar to what you found this man to be suffering from based upon the history and your examination without that particular person having had any kind of an accident to his head?

A. Yes; it might result from disease. He could have inflammation of the brain, we call it encephalitis. It could leave such symptoms like this which would gradually get worse without any injury, of course.

Q. How would you describe that, as functional? A. No; I would say this is organic.

Q. Organic? A. There is actually some change in the brain tissue, some tissue destruction. The X-Rays show that very clearly, show a wasting-away or an atrophy of the brain. That is organic.

168 Q. Now when there is a wasting of the brain, does that ordinarily indicate pressure of the brain or absence of pressure? A. Either way; it frequently means light pressure that is due to injury; there is frequently an increase in spinal fluid pressure.

Q. The purpose of withdrawing spinal fluid is ordinarily to relieve the brain pressure? A. Yes.

Q. Then wouldn't that be sort of contradictory to the existence in this patient of a wasting of the brain? A. Not at all; if the brain itself is wasting but there can be and very likely is irritation of the meninges, the coverings over the brain, The brain may be wasting and there may be an enormous increase in spinal fluid, just the same, enough to make up for the side of the brain that is wasting to take up extra space and I believe this man's improvement is due to the fact that they removed a large amount of spinal fluid at the hospital which at once gave him relief as far as his headaches were concerned and he has felt better ever since.

Q. Dr. Gillis, with reference to the method you mentioned, by means of which a diagnosis is made, what has been the result of such diagnosis? Have you found
169 similar diagnoses in patients who had an injury to the forehead? A. Yes; you do find this condition but not the result of injury. It may be due to inflammation of the brain pre-existing perhaps for a long time or it may be due to a lack of development in the brain. But in the latter case, in the case of lack of development in the brain, the individual generally lacks intelligence. He certainly doesn't get up to the grade of intelligence which this man apparently had before injury. He reached the second year in high school, he tells me, at the age of 16, which is about average intelligence, and I doubt if he had the amount of atrophy which he shows now at that time, at 16 when he reached that grade or level of intelligence.

Q. What is the kind of work that you understand this man had performed prior to the accident? A. Prior to the accident, he told me that he ran a rigger machine that dug in the street. He had to move levers of one kind or another. He was not very clear in explaining it but I assumed it was some apparatus which required the control of levers and the use of some apparatus to dig or something of that sort.

Q. Was there any other kind of a job he had held prior to this accident, that you know of? A. He did W. P. A. work, he said, when he was a linesman.

Q. Wasn't that subsequent to this injury? A. 170 Yes; That was subsequent.

Q. But prior to that. A. Prior to that he had worked in a dairy in Hagerstown, I believe.

Q. What other kind of jobs? A. Lunchroom.

Q. So you have here prior to the accident a compressor operator working in a dairy, working in a lunchroom— A. And previous to that he, of course, was down south working as a checker.

Q. What? A. A checker, checking up the weight of things in some particular form, I don't remember, when he was a young man.

Q. Now assuming the evidence that this man on the day of his accident was just momentarily stunned, but not rendered unconscious, that he proceeded to get up and walk upon a wagon or truck which carried him to the hospital; that he got down from that truck and walked into the hospital; that at no time was he unconscious in the hospital; that his pulse was taken and found to be normal; that his blood pressure was practically normal and that he remained there for two days as stated and then went back to work in approximately a week's time and still performed the work that he had previously, that of a compressor operator from May 1935, to September, 1935; that he quit of his own accord and wasn't fired and wasn't discharged; but

171 thereafter he went to work for the W. P. A. climbing poles, stringing wires, and things of that sort, in other words, practically at no time being disabled from doing the same work he had performed prior to the accident. What if any considerations would you give those things? A. Well, if I assumed that to be true just as you give it, that history, it would be doubtful if he had the type of injury I believe he has had.

Q. Now, Dr. Gillis, you have had experience which you have testified to and you have, no doubt, seen a number of sufferers in a similar frame of mind that you found this patient to be in. Are there any cases of that kind that have, what I would call in a popular, sense, not strictly the medical type, but for want of a better word, I say a "fear complex"? A. Fear?

Q. Do you find that existing in a number of these cases?

A. Well, sir, we do, but I had no evidence of this man having had anything of that kind before his injury.

Q. But I say you do find it? A. Oh, yes; certainly.

Q. And many of this type of patients suffer from hallucinations and this, that, and the other? A. Of course, there are plenty of people who have hallucinations, neurosis, and so on; it is very common.

172 Q. And many times those people have these mental complexes but have no real basis for having those fears. I mean things that they fear haven't existed, don't exist. Q. There is nothing that may be on the surface that they can tell us about, but there is always a cause; there must be a cause.

Q. In other words, Doctor, some patients that you have no doubt seen, I take it, have these fear complexes and have these hallucinations, one day happy and the next day unhappy, moody, and this, that, and the other, and fearing to have something wrong with him and then it was later found out that those fears were unjustified and that many of them were put on in other words, malingering has existed? A. Of course, there is a possibility of malingering, but I don't think there is any sign of malingering here.

Q. How do you find out when a person is malingering or not? A. Well, there are many ways. In the first place there are not many malingerers, and that is based on the 30 years of dealing with injured cases. What is generally true, rather, is that an individual tends to exaggerate his symptoms. The out and out malingerer can be recognized definitely if one knows the anatomy and physiology of the body because usually he complains of nothing physically which can be checked up and we have many ways of checking up those people. One way is to appear quite in-

173 terested and sympathetic with the individual; encouraging him, in other words, this means his undoing and in almost every instance he catches himself. That is an old plan and it works very, very frequently.

Q. Did you try any of these things on him? A. Yes; of course I did.

Q. What did you try? A. This man came to me like every other patient. I don't necessarily believe what I am told but I was convinced that there was something rather seri-

ously wrong with him and I strongly urged hospitalization so that we could study his case more fully and find out actually what was wrong. Take for instance the question of his history. A malingerer generally has it down pat, to use that expression, he will tell you a story just almost like he would recite a poem. A man who is telling the truth about something doesn't tell the thing always just the same unless he is of very low intelligence. The intelligent person usually puts it in a little different way every time. So we often go over the history, perhaps two or three times, to check up on the individual. Then we observe his reaction to certain questions. Every one of us, lawyers as well as doctors, learns a great deal by observation.

Q. Well, you saw this patient, I think, on February 15th?

A. Yes.

Q. Have you seen him since that day? A. No; I have not.

174 A. Yet from that one examination you could tell whether the man was telling the truth or not? A Yes; I can.

Q. Then you disagree with Dr. Spear who says there is no test. A. Why, no; oh, no. There are plenty of tests where you can tell the truth when a man is ill. Of course, when you come to me perfectly normal and tell me you got a check for \$100.00 I have no way of telling if it is true. But with sick people there are certain types of reactions you expect to see and if those reactions are not there when we believe the person isn't telling the truth. What Dr. Spear says, I read his testimony, is that this man is incapable of telling the same story always because his brain condition is such he doesn't remember things. He may make a statement to me one day and another statement to somebody else that may be diametrically opposite.

Q. But I am referring to what Dr. Spear said that it is no test of whether a man is putting on or telling the truth. A. Oh, there are many tests; it depends upon what is told you. There is no universal test.

Q. Well then, you admit that there is no test? A. Oh, no. I won't admit that at all. There is no universal test, but there are plenty of tests. Suppose a man comes in with a peculiar gait, walks as if he had weakness in his
175 legs. Many times the way he walks will tell me that he is malingering.

Q. Well, let's get to some concrete cases which we know you testified in. There were a number of cases in Baltimore in some cases you have testified in here where the claimant was malingering. Now, how did those cases differ from this and in what way? A. Well, I don't think the case was malingering, it was a case of hysteria. That isn't malingering.

Q. But you have testified in such cases? A. Very, very few. I can recall only one notorious case down in Norfolk.

The Deputy Commissioner: Just a minute please. We don't have time to go into all this. This is a long enough record and is going to be of considerable length.

By Mr. Bowen:

Q. We can cut it short by saying you admit that there is such a thing as malingering in these kind of cases? A. Yes; and I have caught up with several of them.

Q. Now, what are your objective findings which you have made here? A. From the physical side there are very few. This man is in rather good physical condition. There was a little change in the reflexes and in the knee kicks, but not of any great significance. The chief changes
176 have been the mental change and that was more apparent on February 15th than it is today. Especially his attitude and his way of answering questions, severe irritability and some depression which did show physical reaction as far as his expression of face was concerned, and so forth. That is absent today.

Q. All right; do you know what was the actual amount of pressure in the spinal fluid measure when this man was examined in Baltimore? A. I don't remember. I did get something in the record but I don't remember. I didn't bring any of that in my testimony, I know.

The Deputy Commissioner: But do you know what it was at the time you examined this man?

Dr. Gillis: Well, I didn't render an opinion until a long time after, until I got all the information from the hospital and so on. I mean, I didn't render an opinion the morning he was examined because I wasn't sure of what was causing his organic condition. I knew it was organic but I didn't know the nature of it and I urged hospitalization and an orthopedic examination.

Mr. Bowen: That's all.

By the Deputy Commissioner:

Q. Doctor, why did you eliminate encephalitis from your opinion in this case? A. Because of the history.

177 Q. What would be the history in encephalitis then? A. Illness at some time or another which would be apparent to this man. It appears as a chronic or an acute condition, and as an acute condition it would be well known to him because he would be quite ill. A chronic condition might not have been recognized at first, but it would have caused enough symptoms to have interfered with his work and caused them to be noticeable by himself and by others, of course, after a time. According to the history I got, this man was well, he had worked very steadily up until the time of this accident.

Q. What do the X-Rays taken after the encephalogram indicate to you? A. Ordinarily it wouldn't show anything because there wouldn't be any atrophy shown. If it is very marked it will be shown in an ordinary X-Ray but if it is slight it doesn't show without injection.

Q. Does the X-Ray indicate whether there is wasting-away of the brain tissue? A. Yes; that is the X-Ray taken at the Marine Hospital. Not an ordinary X-Ray, an ordinary X-Ray wouldn't necessarily show anything. There would have to be enough or rather gross atrophy before it would show and the X-Ray of that would have to be an exceptionally good one. The outlines of the brain itself are not shown very clearly in most X-Rays and it is a
178 question of shadows and we cannot determine ordinary atrophy unless there is say one third of the hemisphere gone or something of that sort. But the injection of air taking the place of the spinal fluid would show at once whether there is more on one side, more space, and consequently more atrophy.

Q. Does a case of encephalitis always have wasting of the brain tissue? A. Not necessarily, but it does occur. If one side of the brain is inflamed more than the other, the circulation is interfered with in multiple areas and there may be a very definite atrophy. However, in the majority of cases there is no atrophy. It may occur.

Q. Is there any significance in the fact that he improved after the fluid was removed from the brain? A. Yes.

Q. What is that significance? A. Following that there was a decrease in the spinal fluid pressure and the mobile fluid relieves headaches very quickly.

Q. Would the same improvement result of he had had encephalitis instead of a brain injury? A. Yes.

Q. The same condition? A. Anything which will cause a reduction in irritation of the meninges, the cover-
179 ings of the brain, would cause an increase in the spinal fluid and that might be due to encephalitis or that might be due to injury. But if it was due to encephalitis it would be a definite pain, known before the injury.

Q. I know that, but what is the significance of his improvement, I mean with respect to the issue whether this condition is due to injury or due to encephalitis? A. Well, we can't tell by the relief. Relief might have occurred in either case.

Q. Is the severity of the injury an important matter in determining the brain damage? A. Yes. It always is. Sometimes what seems to be a trivial injury may cause a great deal of damage and that another time what might seem to be a serious injury may cause no damage at all. But theoretically the amount of force does play its part. The more force there is there the more injury you expect, but it doesn't naturally follow. The condition of the brain, the condition of the arteries they all play a part.

Q. Is there any doubt whatsoever in your mind that this is not a case of neurosis or anxiety or fear but that it is a clear case of brain damage due to injury? A. No.

Q. There is no doubt in your mind? A. No doubt whatever. As a matter of fact, seeing the man purely from the clinical side at the office I thought that there
180 was more neurosis than there was damage to the brain.

The Deputy Commissioner: That's all.

By Mr. Smith:

Q. I would like to ask you one question, Dr. Gillis. Mr. Bowen asked you a question assuming that Mr. Kicklighter was not unconscious and so forth, and he walked to the hospital, would that injury be sufficient to cause his present condition. Now, I want to ask you this: If the

air hose that hit him because of a loose connection was forced by 90 to 100 pounds of air pressure, striking him in the forehead, and he was found upon examination in the hospital to have a swelling where this blow struck him, the size of a walnut, would you say that that would cause a serious concussion? A. I could, yes.

Q. And that could cause the injury that he got? A. Oh, yes. As I said a while ago the amount of trauma, the amount of force doesn't always determine what the effects will be. Sometimes a trivial injury could cause very serious symptoms. For instance a person falling on a slippery floor and striking the back of his head and dying as the result of it. A dozen other people might fall and simply feel a little dazed. The same thing applies to all injuries. A man might fall and break his thigh. A hundred other persons might fall in the same way and not break their thigh. The same thing applies to the brain and skull.

Q. Then, even if this claimant was not rendered
181 unconscious he may have received sufficient injury to cause these symptoms? A. Yes; he may have had a hemorrhage of the brain, a hemorrhage into the brain in the smaller areas. There is no gross hemorrhage at all; or there would be very definite organic symptoms in the reflexes, paralysis and so on.

Q. Dr. Gillis, I want to ask you this: Did you examine the X-Ray and the records? A. Not the X-Ray.

Q. You examined the records of the Marine Hospital? A. No, I read Dr. Spear's testimony as given here and I had reports from the other doctors who examined him and so on.

Q. You had reports from the other doctors? A. Yes.

Mr. Smith: That's all.

Mr. Bowen: Mr. Commissioner, in view of Dr. Gillis' testimony, I ask that this Commission order at the present time an X-Ray taken of the brain of the claimant.

The Deputy Commissioner: I will take that under advisement.

Mr. Bowen: Well, I might say this, as you recall Dr. Spear had the X-Rays with him and I did make an effort to have Dr. Johnson of the Marine Hospital get them.

182 We are talking about the present moment and we are trying to find out what condition this man is in now. According to Dr. Gillis' testimony if an X-Ray would be made now it would be somewhat different from that taken some time ago.

Dr. Gillis: Well, it is due to pressure; I don't think there would be any difference in the atrophy because it is still there.

Mr. Bowen: There would be a difference in pressure.

Dr. Gillis: There probably is; that's my explanation of the relief of symptoms. I don't know of anything else that would relieve the symptoms as readily as the relief of pressure but certainly there would be no change in the wasting of the brain.

The Deputy Commissioner: The purpose of your request, Mr. Bowen, I presume, is to determine whether there is any improvement in the man's condition?

Mr. Bowen: Assume the claim that this man is suffering from this injury, while I don't know it I want to know what his condition is now as to his brain.

The Deputy Commissioner: Doctor, do you feel that there can be any change in the X-Ray at all with respect to damage to the brain?

Dr. Gillis: I don't see how there could be any change whatsoever. I would like to say this for the sake of the man: That this is a very severe test and it invariably
183 ably causes a person to be ill, have headaches, and vomiting. I really can't see the sense of doing it again. Of course it was done by an independent source in a Government hospital clear of any of us interested in the case and the findings ought to be accepted.

The Deputy Commissioner: Under what circumstances would you recommend that an encephalogram be made again?

Dr. Gillis: I can see no circumstances: I don't know if there is a question of the ability of those who took the pictures to work right or not.

The Deputy Commissioner: If there were complaints of severe headaches and pains in the head would you again recommend that brain fluid be removed?

Dr. Gillis: No; I would recommend the removal of more fluid but I would certainly not recommend the injection

because it is a thing I hate to recommend at any time because there is a great deal of discomfort and sometimes a great deal of symptoms for several days such as vomitting and so on. It may happen, in any case we always warn patients that they are liable to be very sick. This man didn't have much reaction. It shows he probably had pressure and it was relieved; but some patients are quite sick. Sometimes it is quite serious.

Mr. Bowen: In other words, what you say is that it didn't show the man had much pressure at the time?

Dr. Gillis: No; he probably had pressure which
184 was relieved. They removed a large amount of spinal fluid first.

Mr. Bowen: I though you also said it would indicate he didn't have much pressure.

Dr. Gillis: I said it relieved the pressure.

The Deputy Commissioner: Is that all the questions to the witness? Thank you, Doctor.

Mr. Smith: My next witness is Mrs. Prusser.

The Deputy Commissioner: Do you have any other medical witnesses?

Mr. Smith: I have Dr. Cohen. Dr. Cohen especially requested that he couldn't get away until this afternoon. I'd like to co-operate as much as I can in getting all the medical evidence over with.

Mr. Bowen: All right; go ahead and get through.

Mr. Smith: You see the disadvantage in your well-taken objection to a hypothetical question?

Mr. Bowen: Well, of course, I had to do that to get it on the record. I think if we go through with these professional witnesses we will be much better off, in my opinion.

Mr. Smith: I don't think the two witnesses that I have in mind would take at the most more than five minutes each.

The Deputy Commissioner: The lay witnesses that you want to put on now?

185 Mr. Smith: Yes; an ill lady and a gentleman who is away from his business.

The Deputy Commissioner: All right; we take more time in discussing procedure than anything else.

Mrs. Hilda Prusser, 606 Eye Street, Northwest, Washington, D. C., called as a witness on behalf of the claimant, being first duly sworn, testified as follows:

Direct Examination

By Mr. Smith:

Q. Mrs. Prusser, do you know the claimant, Mr. Raymond W. Kicklighter? A. Yes, I do.

Q. How long have you known him? A. Since 1933.

Q. Was he a tenant in your house? A. He was.

Q. He and his wife? A. He was.

Q. Now, at the time you knew him, what was your impression of him generally? A. Well, he seemed to be a very hard-working boy when he came there and full of ambition and very nice. He was working all the time that that he was there.

Q. And how long did he live with you? A. Well, close to a year.

Q. Now do you recall the day he left? A. No, I
186 can't say just when he left, however, I know he was there close to a year.

Q. Did you see him from time to time after he did leave? A. Yes; they came back to see me and then they brought the baby back to see me afterwards.

Q. Now after the month of May in 1935, did you see him after that? A. Yes; I did. He came back to my house after that.

Q. Can you tell us about when that was? A. He came to my house, if I am not mistaken, it was either January or February a year ago.

Q. 1937? A. Yes. 1937.

Q. All right. Now, you just tell us about it. A. Well, when he came to the house he brought a little child with him, his little child, and he was looking for rooms. Well, when he came in and asked me about rooms I don't know he didn't look like himself. He didn't act like himself; he seemed to act so different. Before when he was there he seemed to be full of ambition and working and all, and he was settled and he seemed so different when he came back, and when he asked me for rooms, I told him I didn't have any. He stood and talked with me. I asked him where he and his wife had been. He told me she was downstairs. I don't remember just what he said. Well, he acted so different from what he had acted before I really didn't

187 know what to make of it. I didn't know what to think of the way he acted?

Q. What did he look like to you? A. Well, I don't like to say, but I said—

Mr. Bowen: Wait a minute. This witness can tell what she observed of this man but she can't tell what she said to somebody else.

Mrs. Prusser: Well, what I did, I went right upstairs to my aunt.

Mr. Bowen: I object.

The Deputy Commissioner: I don't know if she is going to give a conversation or not.

Mr. Bowen: She said she is going to tell what she spoke to her aunt about.

The Deputy Commissioner: I don't know what she is going to say. I might say to you, Mrs. Prusser, that you can tell us what you observed but don't try to give us any impression as to what conclusion you arrived at.

Mrs. Prusser: Well, I didn't know what to make of him, the way he acted, and I didn't know what to make of him, to see such a different man.

By Mr. Smith:

Q. Well describe the difference. A. Well, he acted, it seemed to me, just like a dope fiend. I thought to myself

“Well, he must be using dope or something” I didn't
188 know what to make of it because there was such a difference in the man's looks from what they was when he quit there until he came back.

Mr. Bowen: No questions.

Royal Bartlett, 1017 K Street, Northwest, Washington, D. C., called as a witness on behalf of the claimant, being first duly sworn, testified as follows:

Direct Examination

By Mr. Smith:

Q. Mr. Bartlett, you are engaged in business in the District of Columbia? A. Yes.

Q. How long have you been engaged in that business? A. About 18 years.

Q. Did you know the claimant, Raymond W. Kicklighter? Oh, excuse me, your business is real estate among other things? A. Yes, sir.

Q. And you lease houses and apartments? A. Yes, sir.

Q. Was Kicklighter a tenant of yours? A. Yes, sir.

Q. Can you give me the date that he was first a tenant? A. Yes, sir. I don't remember but I believe I put it down because I expected you to ask me that. The first time he was a tenant was December 12th, 1934.

189 Q. And how long did he stay? A. He moved out in March. I haven't the exact date but it was in March 1935.

Q. Then was he later a tenant of yours? A. Yes, sir. Then he moved back in that same apartment August 25th, 1935.

Q. August 25th, 1935? A. Yes, sir.

Q. And how long did he stay there? A. He moved out the second time February 25th in 1936.

Q. Now, Mr. Bartlett, all I want you to do, is just tell the Commissioner here what you know about Kicklighter, as to the first time he lived there and the second time. A. Well, the first time he lived there I didn't have any trouble with him at all. I thought he was a rather good fellow. He paid me all right. I didn't have anything to do with him. He would pay his rent and that was all there was to it.

Q. Did you see him frequently? A. Yes, sir. Quite often he would come down to pay me his rent. He didn't always pay it all at one time but he paid it a little at a time and we got along all right the first time and everything was all right until he came back. But when he got back the second time why he just wouldn't pay; he didn't seem to be working. We had quite a little rumpus a good many times.

190 Q. Outside of the fact that he was a bad tenant the second time, did you notice anything as to his personal appearance? A. Well, I noticed he was quite different from what he was the first time. The first time he seemed to be a nice quiet gentleman. The second time if I said anything to him he would fly off to pieces. He had a bad temper.

Q. Can you say anything as to his dress, personal appearance? A. No; I don't recall anything about his appearance.

Mr. Bowen: No cross examination.

Mr. Smith: I am willing to let you go ahead and thank you very much.

Dr. Morhart, called as a witness on behalf of the employer, being first duly sworn, testified as follows:

Direct Examination

By Mr. Bowen:

Q. Dr. Morhart, are you a practicing physician? A. Yes, sir.

Q. For how many years? A. Forty years.

Q. And what has been the general experience you have had as such? A. Well, I have had a great deal of
191 experience in general practice and some surgery.

I have been a resident physician in the Emergency Hospital and was a surgeon in the army in the war. I have been in general practice since then.

Q. Have you acted as medical officer for any of the companies operating in the district of Columbia? A. Yes, the Potomac Electric Power Company and the street car company.

Q. And has it been part of your experience to treat men having various kinds of accidents sustained by them in the course of their employment? A. Yes, sir.

Q. And have part of your duties been to give them treatment or look after those men or see that they are given medical treatment at times? A. Yes.

Q. Do you know the claimant, Raymond W. Kicklighter? A. Yes, sir.

Q. And you recall seeing him around on or about May 24th, 1935? A. Yes, sir.

Q. And under what circumstances did you happen to see him? A. I saw him in the emergency room in the Emergency Hospital on that date.

192 Q. At approximately what time did you see him? A. I don't remember the hour.

Q. Was it in the afternoon? A. Daytime; I don't remember what part of the day.

Q. For how long after the accident? A. Within an hour after he was hurt.

Q. Now just describe in your own words just the condition you found Mr. Kicklighter in when you saw him an hour after the accident. A. He was conscious in the emergency room and he had a lacerated wound of the forehead about three quarters of an inch long in which two sutures had been put.

Q. Did you make an inquiry in the hospital as to the condition of Kicklighter with respect to whether he was unconscious or conscious when brought in? A. They said he was conscious.

Q. How long did the claimant stay in this particular hospital? A. Less than two days.

Q. Do you know under what circumstances he left, why he left? Was he discharged? Or did the man run away from the hospital? A. My impression was that his discharge was because of some interne in the hospital.

Q. Did you drive the patient yourself away from 193 the hospital to some other point up in the city, as testified to by the claimant? A. No, sir.

Q. You did not. Then if the claimant says you did he is mistaken? A. Yes, sir.

Q. At the time you saw Mr. Kicklighter, the claimant, in the hospital, what were the symptoms you saw with reference to whether his eyes were closed or not? A. His eyes were not closed and his face was not swollen.

Q. Was his body relaxed, flexible, cold, clammy, or what? A. The condition was apparently normal.

Q. Do you know what his pulse showed? A. His pulse was apparently normal.

Q. And as to the breathing, what did you find? A. His breathing was regular.

Q. Was there any involuntary movements of his bladder or his bowels or things of that sort? A. No, sir.

Q. Did you find any symptoms of concussion? A. Not when I saw him.

Q. Doctor, are you able to state whether there were signs of shock at that time? A. No, sir.

Q. Was any X-Ray taken of his head? A. No, sir.

194 Q. Did you see Kicklighter at any time afterwards? A. Yes, sir.

Q. When was that, Doctor? A. He came to my office five days after the accident and I took the cursory sutures out.

He came back on the 31st and I gave him a card to return to work.

Q. Did you give him an examination as to his fitness for the return to work? A. Only by talking to him. He said he felt all right and wanted to go back to work.

Q. And you sent him back to work? A. Yes, sir. He worked seven days.

Q. Did you issue a certificate containing these words: "The date, June 1st, 1935. Kicklighter is now able to return to his work subject to the approval of claims department." and signed your name? A. Yes, sir.

Q. As medical officer? A. Yes, sir.

Q. Is that card ordinarily used to certify a man back to work? A. Yes, sir.

Mr. Bowen: That's all.

Cross Examination

195 By Mr. Smith:

Q. Doctor, as the physician for the Potomac Electric Power Company, you also filled out a form report for the Compensation Commission? A. Yes, sir.

Q. And in that report stating what the nature of the injury was. Is it not a fact that you stated, "That he had a lacerated wound on the forehead and contusions." A. Yes, sir.

Q. Then you say now that he did have a concussion? A. That was the record of the hospital as the interne put it down and I copied that as my report to the company after seeing him. The report of the hospital.

Q. When you examined him yourself? A. I made a personal record.

Q. As I understood you on direct examination you answered a question propounded by Mr. Bowen that there were no symptoms of concussion. A. Not when I saw him.

Q. And what time did you see him that you are referring to? A. Within an hour of the accident.

Q. Now at the time you saw him had he been treated already? A. Yes, sir.

Q. And he already had these sutures? A. Yes, sir.

196 Q. Do you know the names of any of the internes in the hospital? A. No. I don't know them. I know

them by sight but I don't pay any attention to their names.

Q. Doctor, did you see a swelling over his forehead? A. Apparently there was no such swelling.

Q. But there was a plaster over it? A. Yes, a surgical dressing.

Q. Did you see him during the time he was confined in the hospital without a dressing? A. I don't remember that.

Q. Would you say that a blow causing a laceration and requiring two sutures and resulting in a swelling the size of a walnut would not cause a concussion? A. I could definitely state that he never had a swelling the size of a walnut over the lacerated skin.

Q. Then you disagree with the doctors who treated him at the Emergency Hospital? A. I don't think that the interne that treated him first put on there that he had a swelling the size of a walnut on his forehead. I don't remember seeing it. If he did, I would like to be corrected.

Q. Dr. Morhart, directing your attention to the month of July, the latter part of July or the first of August, 1936, do you recall the claimant coming to your office complaining of headaches? A. The main thing he complained of was his eye. He was sent to me for examinations of his eyes and I didn't do the work. We always send the eye cases to a specialist whom we think is very good, Dr. Hammett who is very good.

Q. And he examined him and made a report. Did he give you that report? A. He sent the report to the office.

Q. And he felt that he did have eye trouble but that it was not because of the injury? A. That was my understanding; yes, sir.

Q. Now, did you advise Kicklighter to stay off work a few days? A. Oh, yes.

Q. Because of the eye trouble? A. No. Not that time, originally I mean.

Q. You did advise him to stay off work a few days? A. Originally, yes.

Q. Did you know that he was subsequently discharged when he went back to work? A. No, sir. I never knew anything about that.

Q. Well, did you know that he subsequently left the employ of the Potomac Electric Company? A. I only heard that recently.

198 Q. I see. Well now, after he did go to Dr. Hammet, do you know whether he procured glasses? A. I do not know. If Dr. Hammett recommended glasses perhaps he can tell you about it.

Q. Did he ever come back to you for any more treatment? A. I don't remember that he did.

Q. You don't recall whether or not he came back to you for treatment? A. I don't think he did.

Q. Do you recall suggesting to him that he get a lawyer to represent him in the claim for compensation? A. I don't think so. He never made any definite claim to me. He may have, but I don't remember.

Mr. Smith: That's all.

By Mr. Bowen:

Q. There is one question I would like to ask you. I was intending to ask you, Dr. Morhart: In your treatment of workmen and employees of these companies you are accustomed to see men in and of the same social standing of which Mr. Kicklighter was in when you saw him at the hospital? A. Yes. I see a great many.

Q. Does he differ greatly from any such men coming under your observation from time to time? A. I don't think so. A. I don't think so.

199 Q. I asked you a while ago if you had certified the man back for work. I intended to follow that up and ask you if my construction of your act is correct; that you considered he was able to go back and perform his customary work? A. Yes, sir.

Q. In other words, you found no disability existing in the man? A. Yes, sir.

Q. Have you listened to the testimony of Mrs. Kicklighter in this case? A. Yes, sir.

Q. As well as the testimony of the physicians offered by the claimant? A. Yes, sir.

Q. Dr. Gillis's testimony today? A. Yes, sir.

Q. And in view of the kind of accident this man had, and in view of your certifying the man back to work, in view of the testimony and other things that have been narrated, have you formed an opinion as to the genuineness of this claim or not? A. No, sir. I don't think I have.

Q. You haven't formed any opinion? A. No, sir.

200 Q. Are you able to state at all whether this man from your knowledge of him and what has taken place, was able to go back to work? A. When I certified him back to work I think why he was entirely able to work and that was on his own statement that he had no headaches, and no complaints.

Mr. Bowen: That's all.

Cross Examination

By Mr. Smith:

Q. Dr. Morhart, were you employed as a physician for the Potomac Electric Power Company? In July, 1933? A. Yes, sir.

Q. Did you ever examine applicants for positions as to their health? A. Yes, sir.

Q. Did you at that time examine Mr. Kicklighter? A. You see I don't remember.

Q. You don't recall? A. No, sir.

Q. Are there any records kept by the company showing that he was examined as to his physical fitness? A. If he was given a blank form to be filled out one of the doctors of the company filled it out. They usually send them to me, and if he was examined there would be a medical record in the company's office.

201 Q. Now, from July, 1933, until the time he was injured, did you ever have occasion at any time then prior to the injury to see him for any ailment or injury? A. I don't remember.

Mr. Smith: That's all.

By the Deputy Commissioner:

Q. Doctor, have you had occasion to refer to the Emergency Hospital records recently and refresh your recollection concerning the facts in this case? A. As presented here?

Q. You have? A. Yes, sir.

Q. Doctor, I am going to show you the records of the Emergency Hospital which have been made part of this record, have been offered in evidence, and received in evidence, and ask you whether or not you agree with the facts

contained in the evidence or agree with the resident physician of the hospital. I refer you particularly to No. 4. Can you tell from that whether you were the first attending physician? A. The interne was the first.

Q. Who was the interne? A. I can't make out that name.

Q. Is it Bernstein? A. Bernstein, yes.

Q. You didn't see him then until the 26th of May? A. I may have seen him the next day, but I don't see any record of it.

202 Q. Now referring to the second page of the hospital record will you read what the history of that is as contained in the sheet? A. History of the patient states that: "While on duty for the Potomac Electric Power Company at 18th and R Streets Northwest, an air host hit him in the forehead, was unconscious for a short time."

Q. Had you noticed that in the record before? A. Yes; I knew that had been stated.

Q. So that when you testified that there was no evidence of his being unconscious when you saw him, you didn't mean by that that there was no unconsciousness at all? A. No, sir.

Q. Now continuing on that same page, Doctor, will you read the physical examination? A. "Swelling about the size of a walnut over the right eyebrow and also small laceration. And patient was a little nervous. Reflexes where present and patient was a little hazy."

Q. Well, there was evidence in the record then of a swelling the size of a walnut, was there not? A. Yes; that's in the record.

The Deputy Commissioner: That's all.

By Mr. Bowen:

Q. As I understand it, Doctor, that when you stated you hadn't found any injury the size of a walnut you
203 were stating your own observation in the matter?
A. Yes, sir.

Q. You are not testifying as to what somebody else might have found? A. No.

The Deputy Commissioner: All right. Next Witness please.

J. Duerson Stout, 1835 Eye Street, N. W., Washington, D. C., called as a witness on behalf of the employer, being first duly sworn, testified as follows:

Direct Examination

By Mr. Bowen:

Q. Dr. Stout, are you a practicing physician? A. Yes, sir.

Q. Will you for the sake of the record state in a general way what that practice has been, what particular courses you have taken and what experience you have, and things like that? A. I graduated from George Washington, department of Medicine in 1903. I hold a B.A. degree from George Washington in 1910, a medical degree mentioned, in 1903. A Master of Arts in 1914; a Doctor of Philosophy in 1915. I was instructor in various U. S. Army schools. I was professor of physiology in the department of medicine and dentistry in the George Washington University from 1913 to 1916. In 1916 I was commissioned in the regular U. S. Public Health Service and saw various types of duty until I resigned to enter the U. S. Army General Service in late 1917. While in France I was Commanding officer of two special nervous field hospitals. While in France I saw approximately 2,500 cases of head injuries of nervous disease and of mental disease. I made approximately 2,500 additional mental examinations of prisoners in the American Army who had been tried and condemned by Court Martial, and of those who hadn't been found guilty by Court Martial. I took a course of study at the New York Neurological Institute. I previously had taken a course of study in the Boston Psychopathic Hospital; previously I had post-graduate work at the Elizabeth Government Hospital in this city. After resignation from the army and completion of the work in the New York Neurological Institute I returned to this city and entered private practice. I was for about five years a member of the visiting staff of the Emergency Hospital here and I became professor of nervous diseases at the George Washington University Medical Department in 1920; continued until 1927 when I resigned. I have been consultant to the U. S. Veteran's Administration as a doctor of nervous diseases from 1925 until today.

Q. Have you testified in cases before the courts in claims substantially the same as this one? A. I have.

205 Q. Have they been frequent or infrequent? A. In general, as little as possible, because it interferes with my practice. However, I should say that I am called in to court on an average of about once a month and I testify before this Commission approximately once a month in the course of a year.

Q. I will ask you if at the request of the Potomac Electric Power Company you made an examination of Raymond W. Kicklighter, the claimant in this case? A. I did examine Mr. Kicklighter in my office on September 30th, 1937.

Q. Did he made a statement to you of his history of the case? A. He did.

Q. And did you make any notes of that history which he gave you? A. I did make notes and incorporated those notes in the form of a report to your company.

Q. Would you desire to have this in testifying, or do you have it copied? A. I have a carbon of the original report here.

Q. Will you state first the examination you made of this patient and then after doing so state the history, in
206 a general way, he made to you? A. The examination I made consisted, first, of taking the history and then of the physical examination. If you prefer I will give it that way. "Mr. Kicklighter states that he is now thirty-two years of age and that he was hurt sometime in the Spring of 1935. He claims not to know what day of the month but to have been told that it was May 24th. However he remembers that at about three o'clock in the afternoon of the day that he was injured, he was working as a rigger on a job at 18th and R. Street N. W. and had just turned the air off from an air-compressor when a rubber hose with a metal clamp at its end struck him across the forehead and inflicted a small wound above the right eyebrow. He does not remember anything further for several days but has been told that as he was struck he fell and hit the back of head against the ground and was then removed to the Emergency Hospital where he remained about three days. After leaving the hospital he tried to find his automobile but was unable to find where he had parked it. He

has actual memory of looking for the car and of being told by his father-in-law where it was. He claims to have no further clear memory until June or July of 1935. He states that he felt well then until about September when at his work he started to have sharp pain at the top of his head and began to feel weak. He fell over on to a machine he was working at. He does not know whether or not
 207 he became unconscious. He was later told that he had become overheated. He did no work then until about November 1, 1935. When he went to work at that time he found that he had been dropped from the roll. He then worked for the W. P. A. until June, 1936, then one afternoon during a rainy, cold spell as he was stringing wire he had another spell of dizziness while on the top of the pole and did not know whether he could get down or not. He is vague as to how he got down. His general history continued to date in very much the same manner with intermittent employment at the times he has felt well and inactivity when he has felt uncomfortable. He described the head discomfort with considerable vagueness as to detail but localizes it as extending from the right side of the front of the skull to the top and backward. He states that he frequently lies awake for several hours and has a sensation of something moving from the back to the top of the head and gets up and walks about for a time. Sometimes he has a sharp pain at the top of the head. He has been under the care of Dr. Cohen as an out-patient at the Emergency Hospital for some time and sees him once a week. Four months ago an X-Ray was taken of his skull but he was not told what was found.

As to his general history he states that he was born in a small town south of Atlanta, Georgia, attended school to the second year of high school with normal progress and
 208 stopped at the age of sixteen. He then worked for the Atlantic Coast Line at a switch Table for about four years until his organization went on Strike, then at a fertilizer plant checking weights of material, for about five years, then worked at a dairy in Hagerstown as a milker from 1928 to 1930. He returned to the fertilizer plant for a year and a half. In 1932 he worked in the Arcase lunch room in this city for about a year and in 1933 commenced to work for the Potomac Electric Power Com-

pany. Previous to the present difficulty he had always been well and had never had occasion to visit a physician. He has had no other injuries and no operations. At the present time, he feels entirely normal except for the spells of head discomfort. He married in 1933 and has three children. He has nothing further to add with regard to himself.

Physical examination today shows a white male 5 feet 7 inches in height and 133-1/2 pounds body weight. His posture is slightly stooped and the head inclines forward slightly. There are no tremors, paralyses or atrophies in any area. His blood pressure is 136/78 in the right arm; 132/87 in the left arm. His pulse rate is 84 and regular. The heart sounds are normal. There is no cyanosis. The thyroid gland shows no enlargement. The extended fingers supporting a piece of paper show a normal amount of natural type tremor. The pupils are equal, circular and normally reactive to light and accommodation. They are mid-range in size. There is no nystagmus in any position, no ptosis of the lids and no proptosis or endophthalmos. Facial muscle balance is normal in repose and action. The tongue protrudes slightly to his right (unimportant) It shows slight vibratory tremor. Inspection of the face shows faint indefinite scar about 1/3 inch long 1/2 inches above the middle of the right eyebrow. This is well-healed, flat and non-adherent. The underlying skull shows no palpable change of contour. No scar or change of contour can be identified at the occiput. All upper teeth except three in the right side have been removed. The lower teeth seem to be in good condition except for pyorrheal recession about the incisors. The fauces are reddened and congested. The tonsils are deeply bound in scar tissue and not visualized. The ankle jerks are barely elicitable and equal. The knee jerks are moderate; the right slightly more active than the left. The arm tendon jerks are scant except for moderate tricep jerks and are bilaterally equal. There is no clonus in any joint. Babin-ski sign is negative. Tests of somatic sensibility are reported normal to each form of stimulus except for diminution to tuning-fork vibration at each ankle; a little better at the right ankle than at the left, and loss of differentiation for pin-prick sensibility in a small spot above the mid-

dle of the right eye. Circumferential arm 10-1/2, 10-1/8; forearm 10-1/2, 10-1/2; calf 14-3/4, 14-1/8 The grip of the right hand is 26 Kgms; of the left 30 Kgms.
 210 Repeated, right 12; left 32. (This is homolateral to the right forehead injury). The lower abdominal reflexes are moderate and equal; the uppers are not elicited. The cremaster reflexes are normal. Station, gait, and fingernose tests are normally done. Ocular fundus examination shows slight fenous pulsation of the inferior veins of the right fundus, with no other change in either fundus, including no exudate.

From the psychological standpoint, he has excellent detailed memory except for the period of claimed amnesia from immediately after actual injury about May 24, 1935 for three days and for numerous other periods occurring usually during the times when he was working. He has a clear memory of approximate dates and serial memory of events both as to his past life and the periods of the time since injury two and a half years ago. He promptly comprehends all questions asked and promptly answers these questions informatively and with normal verbage. No question has to be repeated. He is not distractible and shows no fatigue during a rather long examination. He is courteous, co-operative and emotionally stable throughout examination. He comes to the office unaccompanied and submits a piece of paper with my name and address and time of examination. He is observed in the waiting room for a half-hour previous to the examination. During this time he is alert, attentive, and pleasant. It is understood that
 211 the X-Ray examination at Emergency Hospital was negative."

Q. Now, I would like you to state whether you have been present during the testimony given by Mr. Kicklighter in this case and if so whether you also heard the testimony given by the physicians for the claimant, as well as the testimony this morning of Dr. Morhart, the physician for the company, who saw him an hour after the accident on May 24th, 1935? A. I think that I have been present during all of the testimony submitted during the previous partial hearing and the present hearing up to date.

Q. I would like to ask if from your examination of the claimant, from testimony as given in this case, from the

testimony given of physicians for the claimant, and the statement of Dr. Morhart, whether you are in a position now to give an opinion concerning this patient and whether or not this man is now suffering from a brain injury. A. I feel that I am in a position to give such testimony at this time. I do not feel that this man is suffering from a brain injury.

Q. Well, will you give us an explanation of just what you consider this man to be suffering from? A. At the time of my examination, as I mentioned in my testimony, I expressed an opinion which I will read: "The patient's history indicates that on or about May 24th, 1935, 212 he had injury of the right forehead with laceration and contusion but without skull fracture. He was observed in the hospital for two days without evidence of concussion. In there is no indication of any brain injury or disease. Organic neurological examination at the present time is essentially negative. He appears to be basically an unstable constitutional psychopath. The peculiar spells with his head that he complains of are not believed to indicate brain injury in view of the fact that his intelligence is intact and his emotional reaction normal. In view of dynamometer readings as noted above and his general attitude, indicated in his history and during examination, I strongly suspect that this man is consciously malingering disability and that there is actually no reason why he should not be back at work. There is insufficient to justify the making diagnosis of the existence of any psychoneurosis. However it is felt that he is being given the full benefit of the doubt when diagnosis is made of the existence of a mild psychoneurosis of the mixed type, not sufficient in degree to constitute appreciable disability. His basic condition is considered to be a constitutional psychopathy".

Q. Have you changed your opinion since then? A. I have heard nothing in this testimony as I have listened to it today in toto to cause me to feel differently than I have stated previously.

213 Q. Dr. Stout, you heard the testimony of Dr. Spear, I think, with reference to certain X-Rays that were taken in Baltimore? A. I did.

Q. And did you hear the expression of an opinion as a result of what was done at that time by the ones present

as to the drawing of spinal fluid and what that indicated to them? A. I did.

Q. Will you please tell me whether or not you hold a similar view or a contrary view? A. I do not agree with it.

Q. Why do you not agree with the conclusion? A. I agree that their conclusions are not supported by the facts presented. Primarily, my opinion is based upon the facts which I now state: This man did not manifest any condition of shock after he was hurt. He was unconscious briefly; he had no increased sweating; he had no shallow breathing that we find in shock; none of the dazed condition. He was designated as being conscious by Dr. Morhart who saw him within an hour of the time of the injury; he showed no indication of any paralysis; no vomiting, no double vision; in short, none of the indications of surgical shock as occur when an injury has been received to the brain. Parenthetically we all receive injuries in the head, we all get so-called "bumped heads" from childhood

214 on, which, of course, if we interpret the term strictly, are concussions of the brain, but if we interpret it clinically, from the standpoint of their importance in the field of physician and patient, all of the childhood cases are ruled out as not being clinically concussions. They are known as "bumped heads" no doubt. The cases which have actual organic injury to the brain, which are visible to the naked eye, where the membranes are exposed to the naked eye so they can be seen and felt, those injuries without any exception whatever result in a state of unconsciousness. A state of unconsciousness that is not momentary but prolonged. This man had none of that. Passing on to the examination in Baltimore, I read over the records and reports of those examinations from Dr. Spear and Dr. Anderson or some other physician at the U. S. Marine Hospital at Baltimore carefully and analyzed them. In those reports it is noticeable that there is a definite absence of organic signs of any injury throughout. That corresponds with my own findings from an objective standpoint. The data of his actual spinal fluid findings as made while he was at the Marine Hospital and of the subsequent encephalograms or X-Ray study of the shadows as a result of the change of fluid conditions in the brain following the injection of air, I cannot remember or I may find them

215 in the report of Dr. Spear. I believe I have a copy here. I quote from the first page of the report from the Marine Hospital in Baltimore, Maryland, on the date of March 4th, 1938. The end of next to the last paragraph on that page: "The lumbar tap shows a spinal fluid pressure to be 130 millimeters water pressure; there was prompt rise on jugular pressure. X-Ray of the skull showed no evidence of fracture. Encephalogram, made on February 21st, showed air to have filled both lateral ventricles and subarachnoid space. The ventricles were not displaced, nor were they distorted in outline. There was a somewhat increased air space between the dura and the surface of both cerebrae at the vertex. Some of the cortical markings were as wide as four millimeters; this would indicate presence of cortical atrophy." I can't recall off-hand what the water pressure equivalent of the spinal fluid is as compared to the normal pressure of 8-10-12 up to 20 millimeters. I can't express an opinion as to whether that 130 is the equivalent or not; I don't think it is very far out, as I remember. This man's report of improvement immediately succeeding the lumbar tap, relief of pressure and that relief continuing on for a prolonged period of time. We know in a general way that the spinal fluid renews itself with a complete change of fluid at secretion, or constant absorption is a continuing process and that the complete change of fluid or renewal probably occurs be-
216 tween three and six days, a week. In other words, a completely new supply of fluid would be put out, roughly, we will say, a week. I think I am not far from correct in saying that. Yes, this man has had prolonged relief of headaches. Now, if he had a pocket of fluid somewhere between the brain and the covering due to a formation of a walled-in, coagulated walling-in, a coagulated mass of serum that the walled-in space was filled with fluid or partially coagulated which was causing an increase in his spinal pressure, that is increased pressure in the spinal fluid, the relief of that pressure by puncture would give him temporary relief but as the fluid coagulated his headache would return. In the first place this man gave no evidence whatever of any pocketing or walling-in of any part of the spinal space or isolation of it. Of the pocketed pressure. There was no indication of it in that report as I

read it. From my study there was no indication of it whatever. I think that essentially answers your question. My opinion remains unchanged as it was formulated.

Q. The statement of Dr. Spear, if I gathered correctly, I don't understand it like a physician would, but as I recall Dr. Spear, he said that Mr. Kicklighter had a shrunken brain tissue and that the extraction of the fluid from the patient's spine relieved it. I was wondering—

The Deputy Commissioner: Relieved what?

217 Mr. Bowen: Relieved the pressure.

By Mr. Bowen:

Q. Now, wouldn't you as a physician say that where there is a shrunken tissue of the brain there is occasion for the removal of spinal fluid? In other words, where there is a shrunken brain there is a pressure? A. There may be pressure or there may not be pressure. There is no reason why there should be increased pressure.

Q. That's what I want to get at; so there is nothing in this whole record, as you see it now, which changes your opinion one bit about the ability of Mr. Kicklighter to resume his normal occupation? A. I think Mr. Kicklighter is just as good a man today as he was ten years ago. I don't think he differs one bit except that he is ten years older.

Q. In your opinion, he has always been this same type of individual? A. I have seen hundreds of them back from his own original point. One day happy, the next day unhappy. In all respects exactly as this man is at the present time.

Mr. Bowen: That's all. You may take the witness, Mr. Smith.

Cross Examination

By Mr. Smith:

Q. Dr. Stout, did I get the impression correctly
218 that you examined the records at the Marine Hospital? A. I had a copy of those which were given to me by Dr. Morhart.

Q. Did you see the X-Rays taken of Kicklighter, of his brain? A. I think that I saw the X-Rays submitted to the Deputy Commissioner at the time of the initial hearing.

Q. Dr. Spear showed them to you at that time? A. I can't remember very clearly; I think they were presented but I didn't go over them myself in detail. I know that.

Q. Do you know of your own knowledge whether or not the X-Rays showed the condition of atrophy? A. I do not, sir.

Q. If they did show a condition of atrophy what would you say was the cause of that? A. I should say it would be impossible to determine that. I listened very carefully when Dr. Gillis testified this morning and I would say it might be a congenital failure of the brain tissue to develop, expand in the normal manner. It might have been the result of encephalitis; it could have been the result of a fall from a high chair when he was a baby. Practically all children get bangs in the head like that. As to saying that this is the result of an injury in 1935, I can't agree to it. The

man's condition has remained too constant from the
219 time when I saw him in September, 1937, until the time of the partial hearing recently and at the present time. Dr. Gillis states that his condition at the present time is better than it was when he examined him in February. Now if this man had a brain injury, in 1935, had bona fide symptoms of organic injury, such as is said to exist, that condition would be continuing here in 1938; it wouldn't be capable of improvement at the present time.

Q. Do you recall that as being the opinion of Dr. Gillis this morning in his testimony? A. By that I understand he meant that the man is in a better condition now than he was when he examined him in February.

Q. Yes; he testified he was in a temporary improved condition and that it was continuing. Well now, if there is a brain tissue or a wasting-away of the brain tissue, Dr. Stout, would it be possible for him to recover from a condition like that? Can the brain tissue be restored? A. The brain tissue is incapable of restoration; that is if it is destroyed it is impossible to restore it. The relief of pressure will tend to restore non-destroyed areas only.

Q. In other words, if he has once lost tissue in the brain he will never get it back? A. That's correct.

Q. And then, if the X-Rays do show a loss of brain tissue then you would say that this man was permanently disabled to that extent? A. First, I get the impression that

220 you did not word that question correctly, Mr. Smith.
I believe the X-Rays do not show the loss of any tissue. It can only show changes in bone or changes in the shadow of the fluid.

Q. Now, Dr. Stout, you heard Dr. Gillis testifying this morning that the diagnosis used nowadays which is a very recent development in medical science, is taking air from the brain or taking fluid from the brain and supplying air—

The Deputy Commissioner: From the spine, you mean.

By Mr. Smith:

Q. Taking fluid from the spine which, of course, is my understanding from the doctors who testified here, to take that fluid from the spine also means taking it from the brain and then supplying that space with air which is a very recent way of diagnosing this type of injury. That's my understanding of Dr. Gillis' testimony this morning.

A. I think it might be better if I try to straighten out some of the meaning there by stating facts. I am not criticizing the doctor in any way. Previous to the development of this technique, in many cases of head injuries we could not demonstrate any objective findings with respect to constitutional psychopaths, that is, those who have been deprived by nature of a full endowment. Now, many of the cases

221 that we find today show definite changes in the brain size as compared to the brain skull. That is, changes in the fluid shadows as shown on the X-Rays after air has been injected. Many of these cases today we can beyond question interpret directly as being the result of brain atrophy. But, we have to have in order to do that, a definite and uncontested history, unquestioned history of a man's previously being competent and having lost something which he no longer possesses but which he did definitely previously possess; in other words, we cannot make that definition unless we have the absolute facts. The absence of skull fracture and the absence of objective brain injury indicates that the smallness of this brain might have existed previously. But I will put it another way. I believe this man at the present time is the same man that he was ten years ago except that he is ten years older physically, and I do not believe he was injured in his brain.

Q. Doctor, if there is an atrophy, is that an organic condition? A. If there is an atrophy, yes.

Q. Then if the X-Rays show an atrophy there would be an organic condition in his brain? A. Organic in the same sense as it might be of an individual who is born with one arm instead of two.

Q. Well, that is an organic sign of a brain injury? A. It is an organic sign of a brain injury in the sense that is a brain difference; the man may never have had it.
222 may never have had it. That is exactly what I think. He never had a full endowment.

Q. You feel he had been that way all his life? A. I think he is the same man today as he was ten years ago excepting that he is ten years older.

Q. Do you still, after hearing all the testimony, feel that this man was malingering? A. Yes.

Q. You think he is doing that now? A. Yes, I made some notes after the last hearing along that line.

Q. Do you think, doctor, that a malingerer would have felt better in the course of a hearing after having gone through the operation that was given him in Baltimore? Do you think he would come in and tell everybody that he was feeling better? A. This type of man would, yes.

Q. Is he an unusual type of a man or a malingerer? A. He is a perfectly normal type of individual from his source of environment, of his group, of his training and of his experience. He is a very reasonable chap, very plausible likeable, and a good example of his class. This man shows no sign whatever of brain injury.

Q. Now, in your report that you read a few moments ago, you stated that he was observed in the hospital for two days without evidence of concussion. Now, you
223 further say there is no indication of any brain injury or disease. "Organic neurological examination at the present time is essentially negative." Dr. Stout, if you were incorrect in receiving this information, first as to the hospital, his having been in the hospital two days without evidence of concussion, and second, as to there being no indication of brain injury, disease, if you were wrong in that, would you still say that this man is a malingerer and that he has no brain injury? A. Yes.

Q. If the evidence showed, if there was evidence of a concussion while he was in the hospital? A. There would be no change in my opinion. I have had concussions, probably all of us have had concussions, theoretically, but we are all normal individuals.

Q. Do you think that this man is emotionally stable? A. I think he is emotionally unstable.

Q. Now, your examination of him lasted about a half hour, is that correct? A. No sir; it is incorrect. My examinations last from one to two hours. They are never less than an hour.

Q. Have you examined the reports of the Emergency Hospital? A. If I have, I do not remember. Possibly I did, but I do not remember.

Q. I mean as to the time that he was injured on 224 May 24th, 1935? A. I don't remember the records of the Emergency Hospital.

Q. Did you examine the records of the Emergency Hospital clinic where he was treated by Dr. Cohen and Dr. Silverman? A. I don't know.

Q. And you did not examine the records of the Marine Hospital? A. Only as in the report I have rendered.

Q. If it is true, Dr. Stout, that Kicklighter took his family on a trip or on one occasion took his family down to Savannah, Georgia, and came back from there and personally as far as he was concerned his mind was a blank, had a case of insomnia, or whatever it is— A. Amnesia.

Q. —amnesia, would you say that he has been suffering from a brain injury? A. It means nothing; it is an intangible example.

Q. That means nothing? A. It means nothing whatever.

Q. Then is there no way of explaining why a man would do such a thing? A. I think, as I have explained, he is that type of a man and when we know the type of man he is that is sufficient explanation.

Q. Now, I want you to assume this is true, as far as this question is concerned. A. I am so assuming.

225 Q. If the evidence throughout the hearing showed that his memory was not so good, would you still say he was psychopathically unconstitutional? A. I would, because I know this man's condition. I have tested him and tested him carefully.

Q. Would you give me a full definition of a "basic constitutional psychopath". That is what appears to be in your report. A. In general, when we use the term "constitutional psychopath" we divide it into two broad general groups and say that an individual person's development is first to be considered as dealing with his capacity to accumulate book knowledge, to learn from the books what others have learned from life and put down. We say that if he is incapable of learning that or of learning directly from life that he is feeble minded. Secondly, we say that the individual who is incapable of learning the social conventions of life so as to live wisely and in a co-operative manner and in a productive manner continuously in the community, and to have a reasonable degree of happiness and to not unduly disturb the happiness of others and himself, is a "constitutional psychopath in the sense of being socially and mentally defective, as not in the first category for book knowledge but in the second category of behaviour. We combine

those two. We say that an individual may be a
 226 "constitutional psychopath" and yet have normal book knowledge, sufficient to go through a university, and hence he is not from the book knowledge standpoint feeble minded. Or we say that a "constitutional psychopath" is inferior, and by that we mean that he not only has been unable to acquire normal social habits, but has been also unable to acquire normal book knowledge. He is defective in both fields. Now, this man, apparently, is not particularly defective in his capacity to acquire book knowledge. However, he is definitely defective in his capacity to acquire social knowledge. Now, we have in the field of constitutional psychopathy many particular formations. The constitutional psychopath who is emotionally unstable, is one of those categories. The individual who is a tramp, wanders from place to place all over the country is a nomad, is another. The one who is a pathological liar is called just that; and so we have many categories. This man's particular formation is more largely towards the unstable individual. He has other trends also. He is more or less of a nomad; he wanders from place to place. He more or less lacks a normal responsibility to his family and in many other ways in this social adaptability field he is below par.

Q. Dr. Stout, would you say that a man who started to work for a company, as Kicklighter started to work for the Potomac Electric Power Company, as a laborer, 227 progressed to the point where he could operate intricate machinery, was given a position of responsibility, adjusted himself to the requirements of the position and satisfactorily discharged his duties, would you say a man like that would be constitutionally psychopathic? A. Oh, yes.

Q. You still say that, even though he did that? A. Yes, sir.

Q. Over a period of years? A. Yes.

Q. Do you intend to leave the impression that his mental incapacity may be absent from time to time and he would be very normal? A. It isn't a matter of incapacity, I don't believe he has any mental incapacity.

Q. I take it from your opinion of this man, then, that he is not a normal man? A. No.

Q. And never has been for ten years or all his life. A. He is not a normal man. He is a constitutional psychopath.

Q. And therefore is not normal? A. Not normal at all from the standpoint of his developmental deficiency.

Q. I am just trying to find out why, if it is true 228 that this man here actually started out as a laborer and then laid pipes, did other things, and studied, and went to the school down there in the Potomac Electric Power Company on rainy days and the instructor found that he was able to get out and operate this compressor machine, found that he was able and then put him out where he knew where to dig holes without causing damage to other lines, and he was able to do that, still would you say that he is not a normal man? A. Yes; I have seen men who were not normal who have gone through and graduated with distinction in the fields of medicine, law, and so forth and they are profound constitutional psychopaths; they can't take it. They blow up constantly; we see them constantly. Men of high standing in the community.

Q. If this man is unnormal, as you feel he has been all his life, and he received a severe blow on his head while he was working, as the evidence shows, would such an un-

normal man or would the condition of such an abnormal man be aggravated by that blow? A. It might be. But there is no evidence that it was now because he is totally lacking in objective findings, that is organic objective findings.

Mr. Smith: That's all.

By Mr. Bowen:

Q. At the conclusion of Dr. Gillis' testimony, Doctor, I asked the Commissioner if they would order an
229 X-Ray taken of Kicklighter's brain similar to what was done and referred to in the testimony of Dr. Spear. I would like to ask you at this time what harm, if any, would come to Mr. Kicklighter if the Commission should order an X-Ray taken? A. I see no reason why any harm should come. The man has already had one without any harm; I see no reason why it should come now.

Q. I'd like to ask one more question. Is there a margin of error liable to occur in the reading of the X-Rays testified to by Dr. Spear? A. There is a very wide margin and very wide interpretation; it is not a very exact thing.

Q. In fact, it is true that in all cases there may be various interpretations by various readers of those X-Rays? A. Not at all, but in large groups of them, particularly with regard to the head.

Mr. Bowen: More particularly to the head. That's all.

By the Deputy Commissioner:

Q. Doctor, what would an X-Ray now show that didn't show before? A. I don't believe anything different would show on an X-Ray now, Mr. Commissioner, than from one taken ten, nine, or eight years ago.

Q. Well, if one was already taken in the last six months or so, would there be any further need for another
230 X-Ray? A. The only occasion and the only reason why I would advise the X-Ray is that if I believed that this man had a brain injury causing contraction of the brain as manifested approximately two years from the time of the injury, a little less than two years, an X-Ray taken at the present time would show that that process was proceeding and not stationary. That would be my only reason for desiring the X-Ray taken now.

Q. You mean by comparing it with the former one? A. Yes; because previous X-Rays are not available. If the proper technique was used we presume the X-Rays taken are dependable.

Q. Is there some doubt in your mind as to whether there was a brain injury or not? A. There is no doubt whatever.

Q. Doctor, on what did you base your diagnosis of mild psychoneurosis? What were the factors that you considered in reaching that conclusion? A. The man shows a defective grip of his right hand as compared to the left hand and so I confirmed it by making tests which is always what I do. At first the grip of the right hand was 26 kilograms; of the left 30 kilograms; then I repeated the test and now his right hand grips 12, goes down from 26 to 12, and the left increases to 32. That doesn't hold water, Mr. Commissioner, that is a fake. That one point alone.

Q. And that is one of the bases for the diagnosis of
231 psychoneurosis? A. It shows an attempt towards malingering.

Q. Now, the other things that the man has, the change of sensibility in the foot. "Tests of traumatic sensibility are reported normal to each form of stimulus except for diminution to tuning fork vibration of each ankle; a little better at the right ankle than at the left and loss of differentiation for pin prick sensibility with a small spot above the middle of the right leg" There is no organic reason I can find for that change of sensibility. I believe it to be functional and I feel that man has the impulse towards malingering. In other words, all psychoneuroses except those based on certain physical things which are in a special group all psychoneuroses in general are a form of unconscious malingering.

Q. Well, is that consistent? You say at one time he is a successful psychoneurotic, and at another he is a constant malingerer. Q. Certainly.

Q. Now, have you give me all your reasons for your diagnosis in the case of mild psychoneurosis, mixed type? A. I am trying to give the man the full benefit of doubt, as I stated.

Q. When you say that you are giving him the
232 full benefit of doubt, what do you mean? A. Benefit

of doubt as to whether or not there is now a functional difference and manifested difficulties, Objectively I didn't find any changes.

Q. Would you say that your neurological examination was entirely negative for objective findings? A. No sir; I say it is essentially negative. It is something like an examination of the eye. There is no such a thing as an absolute norm. In every normal individual we find some variation from the machine norm. There are bound to be variations.

Q. Is your test for ankle jerks an organic finding? A. Yes.

Q. How about the knee jerks? A. All those reflexes are objective findings.

Q. They are all organic findings? A. Yes.

Q. And some of them were negative and some of them positive? A. They were all negative; that was my final interpretation.

Q. You say the ankle jerks were barely elicitable. Is that an indication it was negative or not? A. It means barely elicitable, which is a normal reaction.

Q. You say the knee jerks are moderate, is that
233 normal? A. Yes, sir.

Q. And that the tongue protrudes slightly to his right? A. That is an unimportant variation. For example this man has lost most or many of his teeth. I think he said all except three or four and that would in itself cause variation in the position of the tongue. There is no such thing as an absolutely machine norm. We can only determine it after years of experience.

Q. Was the fact that you stated that he was no in a state of shock following the injury a very important factor in your consideration of this case? A. It is an exceedingly important factor.

Q. Now when would a man evidence symptoms of shock? How long would those symptoms be in existence following the injury? A. We expect shock, if it is to be manifested, will be manifest within six to eight hours after the injury. However, we commonly find and expect to find shock occurring within a few hours after the injury. We commonly expect, if properly treated and given proper shock treatment, that shock will disappear within twenty-four

hours. It may continue, depending upon the amount of blood lost and the severity of the shock. It may last several days. Such a case is very apt to be fatal.

Q. Now, according to your testimony, you found
234 that there was absolutely no change in this man's personality or habits. especially since the time of the injury. You stated in your testimony that you found that there has been no change in this man's personality or habits and you went as far as to say that in the past 10 years there had been no change. A. I give it as my opinion, that there has been no change, and he is today an example of his group and a fairly good example.

Q. In stating that as your impression, did you consider all the evidence in this case, some to the effect that there has been a marked changed in this man's appearance in the past several years. A. I didn't hear any competent evidence to my mind, as a physician weighing the case.

Q. And that he had periods of amnesia since the injury, did you consider that? A. I did, Mr. Commissioner.

Q. And how did you weigh that? A. Of course, such amnesia would have to be proven to me before I accept it. I have seen too much malingering in amnesia. I have seen too much prely functional amnesia.

Q. You reject that, is that correct? A. I reject that.

Q. Well then, there are certain facts in this case which you have rejected as being untrue, isn't that so?
235 A. No; I will eight that question before I answer.

In certain of those facts as presented and which I believe have been incorrectly determined I do not accept the determination and definition and the interpretation of them as submitted to this Commission. As to their occurrence, I do not question that. I question only the interpretation made.

Q. Aren't there many brain injuries where you cannot demonstrate any objective findings? A. It depends upon what you mean by "brain injury". We have all had bumps in the head, of which undoubtedly many were brain injuries, from which we have recovered.

Q. I mean lasting brain injuries, one that isn't just temporary. Q. Exactly, if we were such fragile beings that we did not promptly correct the majority of the injuries of

the brain received, we would never, any of us, survive childhood. In other words, we have to find a point at which we say, "Here is a temporary injury which we will call a bump on the head, and here is a more permanent and serious type of injury which we will call a definite trauma of importance in the future development" and life of that individual." I believe that the injury that this man received to his head belongs to the first category.

Q. I will reframe my question and ask you whether or not there are not many lasting brain injuries which
236 you cannot demonstrate any definite findings. A. I seriously doubt so.

Q. Are there some? A. Undoubtedly, yes.

Q. How would you go about a case like that to determine whether there was any brain injury? A. It has taken me about 25 years to find that out but I don't think I could explain it to you.

Q. Would an X-Ray demonstrate it? A. It might and it might not, because an X-Ray has no date except the date at which it was made.

Q. But you did recommend a further X-Ray in this case? A. I did not.

Q. I understood that that was your answer to the question.

Mr. Bowen: He said if he agreed, I think, Mr. Commissioner.

The Deputy Commissioner: Just a minute; let's have the doctor answer for himself.

Dr. Stout: I said, Mr. Commissioner, that if my position were diametrically opposite to what it is why I would want a present X-Ray picture. My opinion being as it is, I do not think it is necessary.

By the Deputy Commissioner:

Q. Would you describe for me a typical case of brain injury, that is, the symptoms and signs of a typical
237 brain injury? A. I think I can give you a rough picture. Here is a man who gets up in the morning after a light sleep, prepares himself for his day's activities, starts down to his work driving his machine. Somewhat abruptly stops a machine in front of him. He happens to be looking in the side-street and smashes in, going

at the rate of 30 or 40 miles an hour. The man is rendered unconscious and remains unconscious for a period of, we will say, four days. It would be a fairly conservative time. He is carried to the hospital in a state of generalized rigidity.

Q. What does that denote? A. It would mark the pressure accumulating in the brain tissues. He gets to the hospital. He demonstrates jerking in some of his limbs, the pupils of his eyes are contracted to a pin-point indicating the increase in pressure in this particular individual. He sweats freely, he breathes shallowly, his heart beats are slow. He is X-Rayed and a skull fracture is found or not found. He is given shock treatment, protected as much as possible, quiet. At the end of a few hours the X-Ray picture is available showing or not showing a fracture. A spinal fluid examination is done as soon as his condition has extended sufficiently to justify the making of the spinal fluid test. Such a spinal fluid test shows blood of the fresh type, reddish or a deep pink. The pressure is increased beyond question. There is increased pressure because
 238 of the spinal fluid. Then a determination is question there is increased pressure because of the spinal fluid. Then a determination has to be made as to whether he should have surgical intervention or not. We will presume that he does not because we are not discussing a surgical case. At the end of anywhere from two or three hours up until three or four days, as I said here four days after the injury, the man commences gradually to recover consciousness. The shock has been terminated by proper treatment. He gradually commences to recover consciousness. He is irritable, doesn't want to be bothered, commences to pull his knees up underneath his chin, his face is flushed, doesn't want anybody to talk to him, gives short answers or none at all, wants to get up out of bed and so forth. I will try to abbreviate. I am stretching it out too much. Now, this man, in the course of the next four days or by the end of the week, has completely recovered consciousness so that he is approachable. We then try to see just how much mischief has been done. That is our real first attempt to see how much mischief has been done to this man's thinking. We go into his history and we find that he is not able to remember anything more or he is not

able to remember the last six months or year of his life; he has a definite loss of memory. He remembers nothing up to the present moment. We examine him three months later and he doesn't remember anything of the previous conversation. He doesn't remember things a month
 239 or two later. We make our physical examination findings of this man and find various variations in the functional activity of the cranial nerves, the 12 on each side that supply the general functions of the head. Careful study is made of those to see where a common point of brain injury might cause such a disturbance. From our determination then we plan our course, How much we are to interfere and how much we are to let him alone, always bearing in mind the wisest method or procedure is to let them alone unless there is a definite indication for intervention. Now these neurological objective signs may include all sorts of things. They may include the paralysis of the limbs or a partial paralysis of the limbs, of certain muscles, or all muscles. They might be on the side of the body or below the neck if the injury happened to be fairly low. They may include cross eye in one or both sides. They may include deafness of one or both ears partial or well developed. It may include sensory changes; hemorrhages visible from the back of the eye. There may be all sorts of variations; there is no common picture and I don't think that I have ever seen a perfect case.

Q. Well, is that a typical case of a brain injury or is that of a marked or severe one? A. It is a typical case of severe brain injury.

Q. A mild case would differ considerably, would it not?

A. Yes, sir.

240 A. Yes, sir.

Q. Now, you could also have modifications of those symptoms to some degree, couldn't you? Let's take consciousness. Is it necessary for a man to have brain injuries to be unconscious for four days? A. No, sir; he may be unconscious from many other causes.

Q. In your description of a typical case you mentioned unconsciousness for four days. Now, is that necessary that a man be unconscious for four days in order to have a brain injury? A. No, Mr. Commissioner, there may be all sorts of variations. I merely picked up this from the thin air and constructed a case.

Q. May a man have suffered a brain injury and be unconscious only for a half hour following it? A. Yes; in the famous American crow-bar case a crow bar went into the man's left ear and came out on top of his head yet he was unconscious very briefly.

Q. I presume, then that your answer is "yes". He may have suffered an injury though not being unconscious for a half hour. A. He may have been unconscious for five seconds even.

Q. Now there are also cases of brain injury, are there not, where the symptoms of brain injury do not appear till some later date? A. I have already answered that question, Mr. Commissioner, by saying that a properly completed examination would probably show its changes.

Q. You mean the objective signs? A. I refer to the objective signs; there should be some at time. There are certain injuries where maximum mischief can be done and there will be no objective signs shown, but if there is injury to the brain tissue there is going to be shock, not only one time but every time.

Q. Well is shock always manifested? A. Every time. Every time, sir.

Q. Are there cases where a person receives a head injury and goes about his regular routine and then suddenly collapses and becomes unconscious and then probably dies? A. That is not a brain injury; that man died as the result of a hemorrhage which he received.

Q. Well, what causes brain damage, isn't that when hemorrhage is being absorbed? A. It is one of the possibilities of causing brain damage such as an injury to the meninges, the coverings of the brain, thereby bringing pressure upon the brain through its coverings. Injury to the brain itself may be caused by numerous minute fissures caused in the brain as it has been distorted in the movement of
242 compression, as the brain was shoved to one side, and also injuries to the vessels of the brain, minute vessels and larger vessels which are generally local.

Q. And the rupture of such vessels, doesn't that result in the blood being absorbed? Doesn't that cause scar tissue in the brain? A. Yes.

Q. Then, do you reject any brain damage at all in this case? A. I think that this man has had no brain damage whatever, Mr. Commissioner.

Q. You don't believe that the X-Rays taken show shrinkage of the brain? A. I don't question that, Mr. Commissioner; I only say that there is no evidence of this man having injury to his brain on my examination.

Q. Well, I wasn't referring particularly to injury in that question, I was referring simply to whether this man's brain is damaged or normal or abnormal. The X-Rays which were taken in this case, as the testimony indicates, showed that there was a shrinkage of the brain especially on one side. Do you accept that in your consideration of this case or not? A. I accept that those X-Rays have been so interpreted by competent men, but the point is that I do not believe that it occurred at the time of that injury because this man had no signs of such a type of brain injury objectively.

Q. All right. Then I understand that you do admit then that there was some brain shrinkage either since the injury or prior to the injury? A. No, Mr. Commissioner, I do not.

Q. Well, let's get this statement clear as to what you do believe. Was the brain normal or not at the time of the injury? A. You are asking me whether I believe it was normal or not; I don't think it was. I doubt that this man has ever had a properly developed brain or else, I can't say which definitely, in childhood or years previous to this injury of 1935 some injury occurred to prevent its full development or cause the brain to show the changes found in 1938.

Q. You would say then that the changes in his brain could be due to a brain injury? A. They could be due to a brain injury then or previously I prefer previously because there were no signs in 1937 or 1938; there were no signs.

Q. Do you disregard the injury which he sustained in 1935 entirely in your consideration of this case? A. Not at all.

Q. Well, what effect did the injury have on him? A. I think he had a bumped head and hurt feelings, and I don't think he had anything else.

244 Q. Well then, you do disregard any serious or lasting effect as a result of that injury of May, 1935?

A. I don't disregard it; I state that I cannot find any evidence of it. I don't believe it occurred.

The Deputy Commissioner: That's all.

(The hearing was adjourned until 2.00 o'clock in the afternoon

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Afternoon Session

Daniel D. V. Stuart, Jr., Wyoming Apartments, Washington D. C., called as a witness in behalf of the employer, being first duly sworn, testified as follows:

Direct Examination

By Mr. Bowen:

Q. Dr. Stuart, you are a practicing physician? A. I am.

Q. State how long you have been and what course of instruction you had and experience as a physician. A. My practice is limited and has been for the past 25 years to nervous and mental diseases. I graduated in 1908 from the Georgetown Medical School and during my experience I served a year as an interne at the Emergency Hospital after graduation. I served as an interne at Garfield Hospital. During that time I took a post-graduate course in neurology and psychiatry under Dr. William A. White of St. Elizabeth. After that I was commissioned in the navy medical corps. I graduated from the naval medical school here, served two and a half years in the navy as an assistant surgeon and then resigned my commission in order to take up graduate study in my specialty, and went to Johns Hopkins in Baltimore as a graduate student. That was in 1913, I believe. That same year Dr. Adolph Meyer, the director of the psychiatric clinic appointed me as an assistant on his staff. I held that post for three years

246 and then was transferred to the Department of Clinical Neurology and served as a dispensary assistant in that department until 1917. In 1917 I was given an appointment to the faculty of clinical neurology and the same year I was commissioned in the army and given leave from the university. In the army I served as chief of the neuro-

psychiatric service at Camp Mead base hospital, as chief of the neurological service of General Hospital No. 4, and at the time of the armistice I was under orders to join the Base Hospital No. 5 as chief of the neurological service. After my resignation from the army I continued on the faculty of Johns Hopkins until 1921, establishing myself meanwhile here in Washington, commuting back and forth, and have practiced here continuously ever since.

In 1921 I was given an associate professorship at Georgetown and afterwards became Professor of Neurology at Georgetown at Georgetown and resigned that post in 1934. In 1935 I was appointed as Assistant Professor of Neurology at Georgetown which post I still hold. For the past 10 years I have been chief of the neurological service in Children's Hospital.

Q. Doctor, have you had any professional experience in connection with any compensation commission? A. Very little, Mr. Bowen, I don't do a great deal of medicolegal work. It is very time consuming. I have testified before this commission in the past, and I have testified occasionally, very occasional, not more than two or three times a year, before the courts.

247 Q. Have you ever had anything to do with the Virginia Compensation Commission? A. Not that I remember, sir.

Q. Have you, at the request of the Potomac Electric Power Company, been furnished a copy of the stenographic record or transcript of the proceedings before this Commission on May 24, 1938? A. I believe I did. I saw the transcript.

Q. Take a look at this and say whether this is the transcript that you have been furnished and asked to read. (Hands transcript to witness) A. Without going all through it, I am quite sure it is.

Q. Did you read that transcript? A. I did.

Q. Particularly the testimony the physicians offered on the part of the claimant? A. I did.

Q. You have been present, have you not, this morning during the testimony given by Dr. Gillis for the claimant and the testimony of Dr. Morhart and Dr. Stout on behalf of the respondent? A. I have.

Q. I will ask you whether you are prepared, after reading that record and hearing that testimony, to express an opinion as to whether or not the claimant in this case is now suffering from a brain injury or disease. A. I think
 248 I am prepared to say "no." I think I am prepared to answer that question. The answer is "no," in my opinion, he is not.

Q. He is not? A. I say I think I am prepared to answer that question, Mr. Bowen. The answer is "no," in my opinion.

Q. Are you prepared? A. Yes.

Q. Well, I will ask you then if you have an opinion made as to whether or not the claimant, Mr. Kicklighter, is now suffering from a brain injury or disease, and then would you express your reason for such an opinion? A. I don't think he is, Mr. Bowen, my chief reason is that the objective findings on examination by physicians of his own choice, as I have read in the reports and listened to the testimony, don't, in my opinion, bear out the opinion that he is at the present time suffering from a brain injury.

Q. You have heard the testimony of Dr. Morhart as will as the history furnished by Mr. Kicklighter to Dr. Spear and the other physicians for him, as well as the history furnished Dr. Stout, and you further state that you have read the record where it appears that Mr. Kicklighter was injured on May 24th, 1935, in the manner spoken of in the record; that he was taken to the hospital and was examined an hour later by Dr. Morhart who could not find
 249 any symptoms of a concussion on Mr. Kicklighter, the patient; his pulse was found to be normal; his blood pressure appeared to be normal; his eye-lids were not closed; his body was not limp, cold, and clammy; his breathing was not slow; there was no involuntary action of the bladder and bowels; that after two days in the hospital he was released from the hospital, went back home and a week after that returned to work and performed the same kind of work that he had been doing prior to the accident; that he continued in such performance of work, that is operating a compressor, from approximately June 1st to September, 1935; that he resigned from that work; that he went to the W. P. A. and performed work as a linesman climbing poles, stringing overhead wires; later he went

back to the company and performed the same kind of work he had been doing before with a few exceptions here and there; I will ask you, taking those facts into consideration, whether or not you would be able to express an opinion whether the claimant, Mr. Kicklighter, at the time of his accident sustained a concussion or not. A. Because of the different degrees of concussion that there might be that is a very difficult question to answer, Mr. Bowen.

Q. Well, I am referring to a concussion that would be regarded as a marked case or severe case. A. A severe concussion?

Q. Yes, sir. A. I do not think so.

250 Q. I suppose, theoretically, every time a child falls to the ground or a man bumps his head against a rafter or comes in contact with any kind of material matter, there is, theoretically, a blow received, but I will ask you whether ordinarily in a marked case of concussion is it usual to expect unconsciousness where there is a severe concussion? A. It is within a varying period of time after receipt of the injury.

Q. You heard Dr. Stout testify this morning to certain questions put to him by Mr. Smith and the Deputy Commissioner and myself as to what constitutes a marked case of concussion, a severe case of concussion. Are you able to agree or disagree with his statement with reference to what constitutes such a concussion? A. I quite agree with Dr. Stout. A marked concussion is a condition which we see in our work very frequently. There are all degrees of concussion but there are certain evidences which proceed the injury in a very short time in a marked concussion.

Q. I apprehend you have also heard the testimony this morning of Dr. Gillis as well as have read the testimony of Dr. Spear concerning certain X-Rays that were taken of the brain, and I will ask you if there is any marginal chance for error to exist in undertaking to read such X-Rays. A.

I will give the same answer that was given this morning. 251 ing. There is a very wide margin in the interpretation of such X-Rays.

Q. And why does that exist? A. Because of the procedure, the thing that we call the encephalogram, consisting in the withdrawal from the spinal canal of a certain amount of spinal fluid and the substitution of air for that fluid.

That is done because an X-Ray picture taken of the skull with the brain inside doesn't give you any suitable outline of the brain at all. If you pumped any substance, introduced any foreign substance into this space, that substance causes a shadow to be thrown on the X-Ray plate. The substance generally used is air. Other substances have been used but there have been certain objections to their use. However, they give better pictures than air. Now, if the amount of air introduced is sufficient to raise the intracranial pressure beyond what it was when the original puncture was done, that is when the needle was put in in order to allow the escape of the spinal fluid to make room for the introduction of air, the pressure is entirely altered. That is, if the pressure on the needle was reduced about 12 millimeters, which would be equivalent to about 120 millimeters of water, you put in air and raise that pressure about 12 millimeters of pressure or 120 millimeters of water, say raise it 50 millimeters, that air is forced into the trabeculae of the arachnoid, which is the middle membrane covering the brain and which is a loose net-

252 work, that air is forced into those spaces and by being forced into those spaces it gives you a shadow on the X-Ray plates which indicates a space between the surface of the brain, external surface of the brain, and the internal surface of the skull, which is perhaps twice as wide as the actual space there present. The air, the extra amount of air introduced, exerts a certain amount of compressive action on the brain and also fills up these spaces so that when you take an X-Ray picture of it the shadow shows wider than the actual space that is filled with the air. That's one source of error. To avoid that, during the past year, one of the neurological surgeons in Cleveland has been departing from the usual practice. The usual practice has been up to now to take out so many cubic millimeters of fluid and put in so many millimeters of air. In order, however, to prevent this equilibration of pressure, this surgeon has devised a method whereby as he puts in the puncture needle, and as the fluid flows out and is measured, air is introduced is introduced in just a sufficient amount to keep that pressure precisely at the same level all the time. The amount of air introduced that way may be considerably less than the amount of fluid extracted,

but the resulting picture is a whole lot more accurate than the picture gotten by the usually accepted method. So far as I know, he is the only man who is doing that. I haven't tried it myself as yet since I haven't had any occasion to.

That is one source of error, the introduction of so
 253 much air that you get an apparent increase in space between the surface of the brain and surface of the skull when actually no such increase in space exists. Another source of error is through the introduction of an insufficient amount of air. If you don't get enough air in most of it may lodge on one side of the brain thereby pushing the brain, knocking it over to the opposite side of the skull. In that sort of a case you get a picture which shows a very slight space between the outer surface of the brain on the compressed side and the inside surface of the skull, and about twice as wide a space as there should be on the side in which there is air.

The third source of error in the reading of these plates comes about as the result of the position of the head at the time it is taken. If the head happens to be not exactly with the X-Ray tube over it and the plate underneath you may get a sort of quarter view of the head instead of a direct lateral view. You may get a quarter view like this (indicating) and the result is a wholly changed appearance in the contents of the skull and it wouldn't look the same as if you were taking a picture anteroposterior or straight lateral.

Those three sources of error are the only ones I can think of now. All of us who have very much dealings with these cases are cautious in our interpretation of encephalograms and we don't as a rule, or at least I don't, express a very positive opinion on the strength of an encephalogram alone. The encephalogram has to agree with the findings in the case before we put a great deal of weight on it.

254 Q. What importance do you attach to the testimony on the X-Rays taken of the brain in this case as offsetting the opinion you have expressed yourself as to what this man had? A. I would have to see those plates first, Mr. Bowen, as I am too much of a Scotchman; I won't express an opinion on it.

Q. And those plates have not been introduced in the case.
 A. I haven't seen them.

Q. In other words, you would have to see those plates.

A. I make my own interpretations.

Q. And interpret them for yourself. A. Yes, exactly.

Q. Because of the chances for error not only in the taking of the X-Ray but in the interpretation of the picture after taking it. A. That is correct.

Q. Now, you have heard or read the testimony in this case about the fact that this patient has been substantially injured and at the same time was doing the same kind of work, kept on working, that is after the accident. You have read the history given by the patient to various physicians who testified here. You have heard the results given by each of those experts or physicians. What type of individual does the patient, Mr. Kicklighter, appear to you to be?

That is, what group does he fall within? A. Mr. Bowen, you have asked me another question which is very difficult for me to answer without two or three conversations and a chance to observe the patient myself. I have observed him here for the first time.

Mr. Bowen: On that point, I want to say I suppose there will be no dispute on that. We ask if we can have Dr. Stuart examine the patient.

Mr. Smith: Well, I don't think it is necessary to put that in evidence.

By Mr. Bowen:

Q. Doctor, this examination was refused you. I asked if you could examine Mr. Kicklighter but you haven't been permitted to do so. To the extent that you are able, from hearing the testimony in this case and reading the record in this case, what opinion do you express at all with reference to the type of individual the patient is? A. I should put him in the so-called "constitutional psychopathic" group.

Q. You would? A. I would.

Q. Are you able, within the limitations that you must have without the examination of the patient, to form an opinion as to whether or not Mr. Kicklighter is now disabled from performing the kind of work that he was able to do prior to the accident or such as his education, environment, had permitted him to do? A. The reports that I have read and the testimony that I have heard leads me to believe that he is not incapacitated.

Q. You believe he is able to perform the same kind of work he has been able to do in the past? A. I see no reason, from what I have read and heard, why he should not.

Q. Have you undertaken since sitting here to observe the patient, Mr. Kicklighter? A. Yes.

Q. Have you been able to reach any conclusion as the result of that observation today that would permit you to confirm what you have said or not affirm it? A. My observation fits in very well with the opinion I have expressed.

Q. And why? A. Because of his general manner; it is precisely the manner of the individual that belongs in that particular group, and we classify, or I classify him, as belonging in that particular group. I use that term expressly because it is a rather ill-defined group. He does not show the over-reaction of the individual who is neither on the one hand a psychoneurotic, intensely anxious about himself and his own condition, nor does he show the type of emotional response that I would expect from the
257 type of individual who has deteriorated as the result of some brain injury, who was, as all such people are, dimly aware of his own deterioration and was rather irritated by it. He doesn't show any of those emotional reactions at all. He shows the reaction of the personally detached individual listening to a conversation about somebody else, which is quite characteristic of that group that I speak of.

Q. Is it recognized by the medical profession that there are certain individuals, like the claimant, who appear at times to be morbid, unhappy, fearful, unable to make decisions, haunted by feelings of insecurity, the same class of persons who might be wondering what is wrong with the world and drift into morasses of fear or, in other words, develop a fear complex? A. Well, yes. That is a very large group to a greater or lesser degree. There are many people in that group.

Q. And is it found that such sufferers from those things are sufferers without ever having had an accident to their forehead? A. An actual physical accident?

Q. Yes. A. Many of them.

Q. Without having had any trauma, without having had any accident to it? A. Many such individuals.

258 Q. And is there some way of accounting for that or is it dependent upon the particular individual that possesses those fears and complexes and due to his being born that way or not? A. I said that was an ill-defined group. I used that term advisedly. We assume that these people are born that way, that is, they are born with a lessened capacity, perhaps, for adjustability to problems and difficulties in everyday life than they should have if they were getting along comfortably. Whether that is actually true, whether they are born that way with that constitutional defect or whether that defect which is apparent enough is the result of their environmental conditions during their formative years of life in childhood I don't know. I am a little bit inclined to the latter view myself, but the net result is exactly the same in both cases. You have an individual who doesn't adjust well. He can't tackle the problems and difficulties and responsibilities of everyday life. Now, such an individual may get into a certain line of work, and if his circumstances both at work, at home, and financially, and others, run smoothly, relatively free from unpleasantness, he may go right ahead in that chosen line of work and he may advance very far in that chosen line of work. I have seen a great many such individuals in service during the war. Many of them were officers and many of them were promoted time and again. I knew one man, at least, who was a brigadier-general, decidedly a constitutional psychopath, if you want to

259 use that term. Now, if such an individual runs up against anything physical or psychological which disrupts the regular tenor of his life, whether it is a physical accident or purely mental, the running-away of his wife with somebody else, or losing all his money, then that individual shows his defective make-up by beginning to slip. He slips, and he may show his slipping in a variety of different ways. He may develop an anxiety state and get panicky. He may not develop an outspoken anxiety at least but may simply try one thing after another not fitting in very well into each thing that he tries and generally turning into more or less of a drifter instead of being the stable, apparently outward stable individual, that he was before. He no longer travels along as smoothly as he did previously. He may drift around

from one occupation to another holding each job for a little while and then for various reasons giving that up, for reasons that are probably his own rationalizations, and then going on to another occupation, and so forth. In other words, either a physical accident or a psychological accident would produce that kind of a reaction in the type of individual I am talking about. Were there no accident of any sort, everything going along smoothly, he may travel along very comfortably and very well. Do I make my point clear?

Q. Yes, I think you do, so far as I am concerned. I trust it is so for the Deputy Commissioner. You heard it

testified to this morning by Dr. Stout, I think it was,
260 that Mr. Kicklighter is just as competent a man

that he was prior to the accident, or that he is just as good a man, I think Dr. Stout put it, as he was ten years ago, taking into account that the man is ten years older. What is your opinion? Do you agree with that? A. I agree with that wholly.

Q. You do. A. From what I have read and heard here, yes.

Q. Then, if I understand you, your opinion is that this man is not disabled from performing his customary work.

A. I do not consider that he is.

Mr. Bowen: You may take the witness.

Cross Examination

By Mr. Smith

Q. Dr. Stuart, will you tell me some of the objective symptoms of a brain injury? A. Well, that is so large an injury it would take a long time to go over them all. What kind of a brain injury are you referring to? Do you mean a severe concussion?

Q. Yes. What objective symptoms would be found in brain injuries, referring to this case, if you wish? A. Well, that's why I asked you what kind of a brain injury. You mean a severe concussion?

Q. Would that be one of the symptoms? A. No, no. The objective symptoms of a severe concussion would be
261 the onset within a short period, as a period of 24 hours, in my experience, of unconsciousness. That unconsciousness might persist from a few hours to a week.

I have seen it last a week and I have seen it last only ten hours. There would be following such a state a considerable amount of confusion on the part of the patient. I would expect him to be disorientated, not quite sure of where he was or who he was or what had happened to him, or anything else. He may have a complete blank amnesia for the accident which produced the concussion. Finally, independent of these signs of damage to his nervous system, his brain, I'd expect in cases of severe concussion certain measures of surgical shock.

Q. Would emotional responses that you might have seen in this claimant, or did not see, would that be objective evidence of a brain injury? A. You mean, would the type of emotional response indicate anything?

Q. You say you saw none in this man today? A. I did not see the type of emotional response I have just described.

Q. My question is: Would an emotional response such as you described as eagerness and anxiety and so forth, would that be an objective symptom of a brain injury? A. It could be, of course. It could be evidenced in many other things besides a brain injury.

262 Q. But it could be that also. A. It could be that also. I wouldn't expect that to be an immediate symptom; it might be a later one.

Q. Would the fact that the man suffered with a spell of amnesia to the extent that he took his family in bad weather, his wife and two small children and a baby two weeks old, to Savannah, Georgia, came back to Washington and didn't know a thing about the whole trip; stayed down there for some time, worked down there, would a case of amnesia like that be an objective symptom of a brain injury? A. Not necessarily; he might have had such amnesia long before he had the injury. It could be, but it would not necessarily be so.

Q. It could be. Couldn't a blow in the head caused by air compression being turned loose with a force of 90 to 110 pounds, forcing the metal end, striking the man on the forehead, causing a laceration that required two stitches, and swelling the size of a walnut and some unconsciousness, could that be an objective symptom of a brain injury? A. Well, you are talking about cause not symptoms. That might be a cause.

Q. All right; excuse me. Could that be a cause? Could that be the cause? A. Well, of course, it could, if you take these circumstances, but you would have to weigh the symptoms, the physical evidences, the mental evi-
 263 dences that the man showed after that, after the receipt of that blow, in order to determine whether or not that blow had that effect because, in the first place, if a man was struck in the forehead with a natural force of 100 pounds, that is if he got a direct hit, he certainly would have a fractured skull and probably that compressor nozzle would have gone right through his skull. So that the very fact that he didn't get a fractured skull proves that he didn't get a pressure of 100 pounds on his skull since no man living could stand that.

Q. Now suppose that this man after that injury began to suffer from headaches and dizzy spells even though he went back doing the same work; suppose that they became worse and that they developed to a point where he had spells of amnesia, would you say that would be the cause of the brain injury? Could that be the cause? A. Again I say not necessarily.

Q. But it could be. A. It could be, yes, but not necessarily.

Q. Would you say, Doctor, that a man who starts out in employment, as Mr. Kicklighter did, with the Potomac Electric Power Company in July 1933, begins working with a pick and shovel as a laborer, then he lays pipes, later on drives a truck, and during this time in rainy weather and bad weather is taken with other men into classrooms
 264 where they are instructed in the operation of compressing machines with a rigger on them, and they are instructed as to the laying-down of pipes and conduits thru the streets, and how to dig manholes in the streets without causing injury to these other pipes and conduits already laid there; they are instructed in the responsibility of directing other men and doing the work; and that Kicklighter finally became qualified and was placed in charge operating one of these riggers and did so, and he did that over a period of two years up until the time of May 24, 1935, when he was injured. Now would you say that that man who progressed and adjusted himself industrially and socially, would you say that is evidence of a con-

stitutional psychopath? A. I would say that is adjustability.

Q. Then, if that were the case, he would not be a constitutional psychopath. A. Not necessarily; you go right back to my answer. A constitutional psychopath can do all that and more. A constitutional psychopath may have a very high level of intelligence, above the average; he may be able to make very good adjustments of things so long as things run smoothly, but when such an individual runs up against a difficulty and can't master it, and whether this difficulty is a blow on the head from an air compressor, or if, as I said, his wife runs away with another man, then and there he is likely to show his failure of adjustability. He is up

against an unusual situation, a situation that either
265 concerns his own health or concerns his welfare, that is of intimate concern to him in some way, and running up against that particular problem of difficulty, then and there he begins to fail in his adjustment which up to this time has been perfectly good.

Q. So then that aggravated his condition? A. I wouldn't say that; it might precipitate and upset an individual who is already about to be upset under the circumstances, provided those circumstances were not unusual and not disagreeable to him.

Q. Dr. Stuart, you did not see the X-Rays that were taken at the Marine Hospital? A. I did not.

Q. Now, you say there is a large margin of error in interpreting those, but would you say that that was probably the best diagnosis that could have been given? A. Of what?

Q. To find if there is a brain atrophy? A. I think it is only confirmatory, Mr. Smith. I have encephalograms taken constantly in my private practice and in my capacity at Children's Hospital and at Garfield Hospital, and I am dealing constantly with cases of brain tumors, less frequently we see cases of accidents that are injuries. But in brain tumors, I have two at Garfield and one at Children's Hospital right at this moment, one died last

266 night, in 90 per cent of them, as a routine matter, we perform either a ventriculogram or an encephalogram. An encephalogram, as described previously, consists of directing air into the spine and letting it fill up the

cavities. The difference between the two is that the ventriculogram is used mostly for the diagnosis of brain tumors. However, I never take an encephalogram or ventriculogram as conclusive evidence of the presence or absence of anything I am looking for in the skull. If my clinical findings indicate a person has a tumor and then I find that the person's air capacity on one side of the skull, the side on which I suspect the tumor lies, is very definitely lessened, then I take it for granted that that is just another piece of evidence in support of my diagnosis. But I never base my diagnosis wholly on that.

Now, so far as brain atrophy, the opposite condition is concerned. We run up against difficulties that I spoke of a little while ago. An injection of insufficient air can make it appear that you have got more actual space between the surface of the brain and the skull than really exists; an overdosage of air, so to speak, can bring about exactly the same appearance. Finally, the position of the head when the picture is taken, at the time the picture is taken, even though the direction or injection of air is perfectly good, the position of the head at the time the picture is taken may determine to some extent the contents of the skull.

267 So that an encephalogram is not for me conclusive evidence; it is only confirmatory evidence at best.

Q. It is better than a guess, isn't it? A. Yes, it is better than a guess.

Q. Dr. Stuart, while that would only confirm the clinical findings and wouldn't be definite proof in your opinion, it also would not be a definite indication that there was no injury. Isn't that so? A. I don't quite understand you.

Q. Well, I am reversing it. A. You mean if there were—

Q. You could not by the same method show that there was no brain injury. A. I see what you mean. If, apparently, there was normal space between the brain and the skull would I say that that is absolute positive evidence that there was no brain atrophy? No; I wouldn't.

Q. Well, would you say that if the clinical findings agree with the encephalogram that that would be pretty strong evidence that there was brain atrophy? A. I would say it is confirmatory evidence, precisely.

Q. Then, Doctor, if an injury received by Kicklighter on May 24, 1935, if this were true, I want you to assume this

to be true, and as a result he developed those headaches and dizzy spells which became worse and more severe, and actually caused amnesia, actually caused him to do
 268 abnormal things such as taking his family down to Savannah, Georgia, as has been described, and actually caused him to do other things, to jump from one place to another; and finally after medical treatment and examinations he is taken to a hospital and an encephalogram is performed on him showing the presence of atrophy, would you say that meant, assuming all these facts to be true, he was suffering from that condition because of the injury he received on May 24th? A. I'd have to go back and go over his history, the type of injury sustained, the findings at the time of the injury, subsequent course of the injury for at least a week or two, and so forth.

Q. Then you wouldn't answer the question either "yes" or "no." A. I can't answer it "yes" or "no," Mr. Smith, because of your assuming all those facts.

Q. I say "assuming those facts." A. Even assuming those facts, they are all subjective complaints which you cannot measure. If the man says he has a headache, he may or may not be telling the truth. The man says he has amnesia; there is no way of telling that objectively. The man says he feels dizzy, and unless he has got an objective vertigo you cannot tell whether he is telling the truth or not. However, even assuming he was telling the
 269 truth, that he has headaches and attacks of dizziness, and he has attacks of amnesia, and an encephalogram taken two years after the injury shows an apparent brain atrophy, shows an undue amount of air between the surface of the brain and the skull overlying it, I still wouldn't accept that as complete evidence that such a brain atrophy exists in the first place, or, in the second place, that it was due to the injury. I'd have to go back over his history at the time of the injury, see what happened to him then and afterwards, because, if at the time of the injury, the man was not rendered unconscious or was unconscious for only a few moments at most, did not show shock, and did not show clinical evidence of damage to his nervous system, his reflexes were normal and that sort of thing, then I'd say we have to hunt somewhere else

for an explanation of the encephalogram. That is what I would tell a man who came into my office with no question of compensation involved. I did see such a man about a month ago. He had a very similar history of atrophy and there was no question whatever of compensation involved. I was being persuaded to say that he was injured in a car accident, apparently due to his own fault, but that didn't have anything whatever to do with his present condition except as a precipitating factor of an instability that was already present, and I went back over his earlier history and I did find many evidences of instability in the past before his accident had taken place. So the mere fact

270 that an encephalogram taken two or three years after an accident shows an apparent brain atrophy which may not be there, in an individual who has had it for a period of three years after an accident, subjective vertigo, subjective headaches, subjective amnesia, those added together wouldn't make me say that he was necessarily suffering from the effects of the accident three years earlier. I'd have to know what happened to him at the time of the accident.

Q. Well, would it have been possible for him to have been suffering from it? A. I don't think so from the kind of history we have in this particular case, because the only way we explain such atrophy is precisely on the grounds that Dr. Spear gave in his report to Dr. Anderson, but either in his testimony or his report he expressed the opinion that this assumed atrophy or presumed atrophy was due to multiple punctate cerebral hemorrhages followed by diffused intercerebral scar tissue formation with subsequent degeneration of the association or rather associated pathways of the brain which were brought about at the time of the accident by the tremendous blows that this man got on his head. These blows were bound to produce punctate hemorrhages. Now, I have never seen these at all, and I can say that in my 25 years of experience I have seen a great many cases in private practice and still more in my own clinic here in Garfield and Children's, and I

271 have seen a great many injuries of the brain, brain concussions, and I have never yet seen a case in which there was an aftermath like in this one which did not show at the time of the accident, immediately after the ac-

cident, all the evidence of multiple punctate hemorrhages. When you have multiple punctate hemorrhages they bring about an outpouring of a blood serum which brings about deep unconsciousness. A man can get the same thing from drinking too much alcohol. There is a definite irritation of the brain from the absorption of the blood in these small membranes there is an outpouring of serum. The whole brain becomes, so to speak, becomes wet, soggy, swells up and fills up the skull cavity, and the individual becomes deeply unconscious, the unconsciousness being the result of that pressure. But it clears up and he recovers consciousness, that is after a blow which can knock a man out for 10 or 15 minutes. I have done some boxing in my time, amateur boxing, and I have been knocked out more than once and have been unconscious at the time I was knocked out. At the time I was knocked out I had a brain concussion, but my unconsciousness never lasted more than 5 or 10 minutes at the most. After that I'd rest a bit, take a shower, and in two or three hours my mind would be completely cleared up.

Now, if that man received a sufficiently hard blow on his forehead to produce multiple punctate hemorrhages in sufficient quantity to give him a brain atrophy, he
 272 would have to become unconscious. I don't see how he could have but become unconscious. Later, with the absorption of that blood, there would be a certain measure of fibrosis, a certain amount of tissue formed, and with the formation of that tissue there would be shrinkage of the brain present. Besides that, there would probably be minute microscopic fissures of nerve cells with damage afterwards degenerating, their place being taken by connective tissue cells. The whole part of the brain being affected would become atrophic. However, I don't see in this particular case how that could have happened because you have an entire disproportion between the time he was actually struck over the head and the evidence at the hospital and this aftermath that developed a few days later.

Q. Would it be possible for me to be struck with what we call a "minor concussion" and to develop cerebral hemorrhage? A. Of course.

Q. I could develop that. A. Right then and there, but if you did develop it you would have the objective evidence of

it within a few hours, and the evidence would depend on the extent of bleeding and the extent of pressure resulting from that injury.

Mr. Smith: That's all.

By the Deputy Commissioner:

Q. Doctor, did you make an examination in this case, if so, I presume that it was a lengthy examination?

273 A. If I had made an examination.

Q. What would you consider the most important part of such an examination before arriving at a conclusion as to whether there was any brain injury? A. The physical objective findings and the evidences of the patient's mental state which I'd get out of the questions and conversation.

Q. Would your observation be very important of the patient himself? A. You mean of his reactions?

Q. Your questions. A. Yes, that would have a bearing on my opinion.

Q. Do you consider yourself somewhat at a disadvantage not having examined this patient? A. I'd feel better qualified to express an opinion if I had made an examination of him, but I think the testimony is pretty clear.

Q. Well, what are the important factors in this case, as you have reviewed the testimony, which lead you to the conclusion or opinion that this man does not have any effects as the result of the injury sustained in May of 1935. A. Well, I have just given them, Mr. Commissioner. I think there is an entire disproportion between the objective findings at the time of the injury.

Q. I mean from the facts of the case, the outstanding facts of the case, which in your opinion leads you to the conclusion, leads you to believe that there were no effects as the result of that injury? A. I still think my answer is correct, but let me put it differently. I don't believe—my experience of 25 years doesn't lead me to believe—that a man who would have so few evidences of damage at the time of the injury should now be suffering from damage as the result of that injury. Therefore, I am inclined to put a different interpretation on the situation than the interpretation that has been put on it by Dr. Spear or Dr. Gillis.

Q. Have you rejected the facts, or some of the facts in this case? A. I have rejected the rather positive statement of Dr. Spear. One point in his testimony, I believe, was that an encephalogram, I may be misquoting because it is two or three week since I read it, but I think in one place he makes the positive statement that the encephalogram taken of this man was absolutely evidence of an atrophy. I take exception to this statement for reasons I have given to Mr. Smith. I take exception to another statement Dr. Spear made. He said that there was an increased pressure in this man's spinal fluid. Well, as a matter of fact, as recited this morning by someone who was reading the transcript of the record of the Marine Hospital in Baltimore, it
275 showed a pressure so slightly increased that we wouldn't ordinarily call it an increase at all. The normal would be 120 millimeters of pressure. In this man's case it was 130 millimeters or there would be only a difference of one millimeter, that is the difference between 12 and 13 millimeters of mercury, which is considered a normal amount of pressure. Dr. Spear made the statement that his spinal fluid was under increased pressure, I am again quoting from memory, and I am not sure that it is accurate. Yet, he spoke of this atrophy or assumed atrophy. Now, these two statements contradict each other. Dr. Gillis this morning said, in reply to a question, that it was possible to have increased spinal fluid pressure in the presence of brain atrophy. That is, with an actual shrinkage of the contents of the skull it would still be possible to have an increased spinal fluid pressure. Now, that answer was absolutely correct as far as it went, but it wasn't complete. That is, it is only possible if there is irritation, inflammation of the meninges, the membranes covering the brain. Now, that's an infectious process and there is no question of any infectious process having taken place inside this man's skull. If there was a question of any such process having taken place, at no time has it been shown on Doctors Stout's, Spear's or Gillis' examination, yet if he had meningial irritation he couldn't help but have the physical evidences which show themselves unmistakably. No one could mistake them. So that the an-
276 swer to the question, while it was exactly correct, Dr. Gillis' answer to the question was misleading

since this man had only, or rather not only had showed no evidence of meningeal irritation, but since there was no question of any meningeal irritation existing in the case and he couldn't have had an increased pressure with a concomitant atrophy of the brain. He just couldn't; it couldn't be physically possible.

Q. Now, in addition to your comments on the medical testimony, you also consider the history of the case important, do you not? Tell me about some of the facts in the history that you consider important; his history both prior and subsequent to the injury. A. Very little prior to it except his history as recited by Mr. Smith. The man had been employed two years with the company. He progressed steadily from the status of a laborer to the status of a skilled mechanic. No; there is nothing in the subsequent history that I consider directly indicative of brain injury. The subsequent history is typical of an individual who having adjusted perfectly well up to a certain point; who has thereafter failed to adjust himself to the circumstances of life that he had been accustomed to. He may have failed to adjust because of the physical injury, but that doesn't mean that the failure of adjustment is due to physical damage, it only means that the physical injury acted as a block to further progress along his chosen road.

I go along, you go along, everyone else goes along,
277 highly educated professional men, we all go along
and run up against something suddenly. It may be a motorcar accident or it may be a mental shock, and thereafter we are no good. We all know of many such cases. A lawyer who gives every promise of getting far in his profession goes along to a certain point and then sustains a mental shock, perhaps something goes wrong with his physical health which is entirely temporary, and thereafter he is no good, becomes uninterested in things, and rather lackadaisical about his practice and all that sort of thing. Now, I don't think we can consider, I think we have to discount that kind of history as resulted from the actual injury sustained in this man's case. There is a sort of psychological shock which wouldn't affect a stable individual but affects these individuals because they are essentially unstable, or, if you want to use that newer term, are "constitutional psychopaths." That was my interpretation. I

take the subsequent history and say it doesn't prove anything at all excepting that he failed, following this accident, to adjust himself satisfactory to things, conditions, as he had before the accident, but that would not be evidence that the accident had produced any lasting physical damage to his brain.

Q. In your opinion then, there has been some change as compared to and prior to the injury? A. From the history, there has been a difference in his way of handling things, that is seen from his history, but I don't consider that evidence in any way of lasting damage to his brain."

The Deputy Commissioner: That's all.

Charles M. Hammett, 1713 Rhode Island Avenue, Washington, D. C., called as a witness on behalf of the employer, being first duly sworn, testified as follows:

Direct Examination

By Mr. Bowen:

Q. Dr. Hammett, are you a practicing physician? A. Yes.

Q. And in what branch of medicine? A. Eyes.

Q. How long have you specialized in eyes? A. About 38 years.

Q. What has been your preliminary education before taking up the specialty of eyes? A. Well, I practiced general medicine for five or six years. I was associated with Dr. Wilmur of Baltimore for years and then I came up to the Eye and Ear Hospital in New York.

Q. And you have been practicing for some 38 years since? A. Thirty-eight years, as I said; yes; sir.

Q. As a specialist. A. As a specialist; yes, sir.

279 Q. At the request of the Potomac Electric Power Company, did you make an examination of the eyes of Mr. Kicklighter, the claimant here? A. I did, sir, about two years ago.

Q. And did you make a memorandum of it at the time? A. Surely.

Q. What was the condition you found at the time? A. I examined him on August 24, 1936 for the first time and only time, although I saw him twice. I found that his right

eye was 20/40 without lenses and the left eye was 20/20 without lenses. The vision in his right eye was 20/20 with lens and in the right eye 20/20 with lens. I found he could read Jaeger 1 at 6 and 21 inches with either eye.

Now, according to Snellen and Sgerling who are our authorities on percentage, that would give him an 83.6 of vision efficiency in the right eye, and 91.4 of efficiency in the left eye. That is according to Snellen and Sterling.

The Deputy Commissioner: Is there any claim of defective eyesight as the result of the injury?

Mr. Smith: No.

Mr. Bowen: I think, Mr. Commissioner, it was stated that he had eye trouble as a result of this accident.

The Deputy Commissioner: But there is no claim that he has defective vision as a result of the injury. I don't know what the effect of all this is going to be.

280 Dr. Hammett: It will just take me a few minutes more. With the glasses he saw 20/20, that gave him perfect vision. I found that his lids and cornea were all in a normal condition as well as the eye-grounds which were absolutely normal. We put medicine into the eye to enlarge the pupils so that we could see the eye-grounds more clearly, and they still showed a normal condition. I could find no results of the injury which he received.

By Mr. Bowen:

Q. That is to say the condition in his eyes was not due to any accident. A. That is when I saw him.

Q. Well, what was his condition due to in your opinion? A. His condition was due to hypermatropia and astigmatism, far-sightedness which many of us have.

Roger S. Cohen, 726 Eye Street, Northwest, Washington, D. C., called as a witness as behalf of the claimant, being first duly sworn, testified as follows:

Direct Examination

By Mr. Smith:

Q. Dr. Cohen, will you please state for the record your education and experience as a practicing physician. A. I am graduate from George Washington Medical School in 1924, had a year's internship at Emergency Hospital and

two years on the staff of St. Elizabeth; a year of
 281 study in psychiatry abroad, in Vienna, and since
 1928 I have been in the practice of mental and nerv-
 ous diseases, three years of which time was spent in Balti-
 more and during that time I was on the staff of Johns Hop-
 kins. Here, I have been Assistant District Alienist, and I
 have been on the staff of Gallinger and at the present time
 I am on the staff of Children's and Emergency Hospital.
 I have been certified as a member of the American Board of
 Neurology and Psychiatry.

Q. Are you a member of the lunacy commission? A.
 Oh, I forgot about that; I have been appointed a member
 of the new Commission of Mental Hygiene.

Q. Now, Dr. Cohen, you are on the staff of Emergency
 Hospital at this time. What is your capacity there? A. I
 am the psychiatrist; I am the only psychiatrist there.

Q. And as such, did you have occasion to see the claim-
 ant here, Raymond W. Kicklighter? A. I did, sir.

Q. Did you see him as a relief patient? A. Yes; he was
 sent in by the Public Assistance Division.

Q. Do you have the records with you from the clinic
 there? A. Yes.

Q. Now, will you tell us how he came to you. A. The first
 record shows that he was sent by Dr. Silverman in the
 Medical Division on, I am not sure, but it looks like
 282 the 19th of March. I don't know if that's the exact
 date but it doesn't make any difference because it
 was previous to my seeing him.

The Deputy Commissioner: What year was that?

Dr. Cohen: 1937, and Dr. Silverman referred him to Dr.
 Shugrue who runs the Neurological Clinic at Emergency
 Hospital. His report dated March 22, 1937, reads as fol-
 lows:

"O. K. to May 1935. Has been working at the Potomac
 Electric Power Company for two and a half years prior.
 At 2:00 p. m. that date hit by hose in right forehead and
 awakened in Emergency Hospital. In hospital three days.
 No bleeding from cavity. Complains of headaches. Seven
 days later at work and two weeks later on his regular
 work."

Here is a word I can't read. We will skip it. And then
 there is:

"Two months and one day, headaches worse than ever and keeled over on machine and unconscious for few minutes. When came to was lying over machine. No one saw it, called men at work nearby and helped off machine. Has had two or three spells since. Has had headaches and felt as if going to faint. Four months ago had another spell and when awakened was in Savannah, Georgia. At times can work yet spells prevent work. No trouble like
 283 above prior "to accident. Dizzy at times. Twitches at times. Neurological examination: Complete neurological examination including fundi fields, and so forth. All negative except retarded in all answers. Some anesthesia to pain at various points over body. Says don't feel pain or dull or cotton over site of injury over forehead. Concentric contraction of his visual field. As far as treatment is concerned I have no suggestions. Kindly get a short history of what he was prior to accident."

Then the X-Ray was taken.

"Examination of skull shows no definite abnormalities."

Then Shugrue on April 5, 1935, says:

"Emergency room card May 24, 1937."

I don't know what it means.

"State 'he walked in.' Referred to Dr. Cohen."

Then I saw him the next day, April 6, 1937.

Q. Just go on referring to the records and tell us what your findings were. A. As I said, he was sent to me by Dr. Shugrue. I saw him, as I recall, a few minutes on the 6th. It must have been that I had too many patients as I see a letter dated April 6th, 1937, to Miss Rosendorf of the Public Assistance Division as follows:

"This patient was examined in part only today.
 284 Examination will be continued next week. In the meantime, I would recommend continuing him on relief." I felt at least that he ought to have the benefit of another week at which time I would examine him so on the 13th he came in and I put down the following: "Feel like I want to lay down all the time." Present illness: Has been feeling badly for about two years. Says he felt all right up until the time of the accident in 1935. (month uncertain) Was hit on the left side of forehead by an air hose and rendered unconscious. Has worked some since the accident. Saw the company doctor after the accident;

patient says he was given aspirin tablets by him. Symptoms at present: Sometimes he feels perfectly well: and other times he is fatiguable, can't remember well, can't sleep, has a poor appetite, is dizzy, is very irritable, can't stand noise, and so forth. Says he is sick more often than well now. 'Seems like I want to be myself,. 'Want people to let me alone then I'd be all right.' Gets dizzy if he has to bend over.

Sensorium examination: Orientation correct. Memory for recent events impaired; dates very inexact." I haven't got the details down here but I noted that the dates particularly were very inexact. Then we gave him a calculating test. For instance, we ask him to repeat five digits. We would say "three, one, five, seven, nine" and we would ask the individual to repeat them. Of course, I don't say them as quickly as that. Well, this man had a high school education and you would
285 expect him to be able to repeat six or seven digits.

I mean seven digits forward and he could barely repeat five digits forward. Also in doing calculation he said seven times eight was forty-nine. Taking his education into account that meant something. Then we have that well-known "seven from one hundred" test. We tell the patient to take seven from a hundred, seven from that, and so forth. It is a test for concentration and memory. He said "ninety-three, eighty-eight, eighty-one, sixty-five, fifty-eight, fifty-one, forty-five" all very slowly, I didn't make him count all the way down because he made so many mistakes. It was perfectly obvious he couldn't do it. I asked him in the sensorial examination who was the president and he said, "Roosevelt", before him was "Hoover" and the one before him, "Wilson." This again we take into account as we expect more than that from a man with his education. He wasn't the least bit posted on current events and he evinced no interest in them. In reply to my question about his insight or understanding of his illness he said, "he thinks there is something the matter with his mind but doesn't know what it is." I didn't make a neurological examination as I relied on Dr. Shugrue's examination. I also noted his speech was very retarded and he was quite incoherent. I made a diagnosis of "traumatic neurosis, severe" and I gave him some pills to take

for his sleep. Since he has been in numerous times since then I am quite sure I haven't always made notes
 286 on him if there hasn't been any particular change in his condition. However, I have a good many notes here.

Q. I would like you to refer to them. A. Well, at times he is better, take for instance June 8th, 1937:

Better in every way. Eating and sleeping well.—Less dizziness, irritability, and so forth. Can think clearly. Wife has been at George Washington Contraceptive Clinic. Patient is looking for work. He is an engineer."

Then I see on July 13th, 1937:

"Patient still getting along fairly well. Sleeping well most of the time. Very infrequent headaches. 'I feel 100% better.' Still looking for work.

On August 3rd, 1937:

"Feeling pretty well but has no job yet."

January 4th, 1938:

"Patient says case was won in the Compensation Commission but exact amount has not been settled as yet. When award is made patient expects to go with his family to the farm of his wife's grandfather near Cortland, New York."

During all this time he had trouble sleeping and there are numerous times when he was supposed to come to the clinic and he didn't arrive, and I never found out just why. However, I got it in a general way from his wife that it wasn't unusual for him to leave his house and for-
 287 get where he was going and wander back home an hour or two later without having been to the place he intended to go to. He was generally confused when he was in, although I must admit that recently he has shown a great deal of improvement along that line. He has always been rather dull and not very alert, although alertness is one of the things in which he has improved lately. His judgement, I don't feel, has been very good. He has complained constantly of difficulty in sleeping, of poor appetite, and of fatiguability. I have urged him from time to time to get a job, to drop the compensation business and let the Electric Company go its own way. I told him to see if he couldn't go out and support himself and he said he was looking for a job, but so far as I know he has

never found one that amounted to anything. I once sent him to the Self Help Bureau on Pennsylvania Avenue and I said: (This was on August 31st, 1937)

"Mr. Raymond Kicklighter is a patient in this clinic. He is anxious to get work and I believe he will be much benefited if you can give him some work."

As far as I know, he never went there. My object in a case like this is to rehabilitate the man. I am not interested in the compensation one way or the other.

Q. Dr. Cohen, did you also talk to him at your office from time to time or was it mostly at the clinic? A. It was almost always down at the clinic although once or two times he came up to my office, but I don't remember what for. I also saw Mrs. Kicklighter several times.

Q. Will you state briefly what Mrs. Kicklighter gave you as to the history of the case? A. Well, she gave me this history of his having been in Savannah and not having known anything about it and about the thing I referred to a few minutes ago, about his wandering off from the house to go somewhere and not remembering the place he was to go to, and about a great deal of confusion about the home. She confirmed what he told me about him being irritable and about his suffering from dizzy spells and headaches from time to time. I'd like to say before the end of this that he has shown a great deal of variability at times when I was hopeful he was getting better and would be able to get a job and go back to work. Other times he would just shuffle down and appear very lackadaisical. Recently he has been better.

Q. Now, when was the last time you talked to him? A. It was Tuesday, at the hospital, this week.

Q. And in talking to him at that time, tell us briefly what you learned from him there, if anything, new. A. Yes, he told me, I guess he told you too, something about his having deserted from the army twice. I had asked him about that previously in June when he was in. And at that time he was too confused to give me answers. But on Tuesday I made him tell me the whole story of his two desertions from the army, the dates, as near as he could get them, the reasons for his desertion and so forth.

289 He enlisted three times, bought his way out the

first time and went back 15 days later. Then he deserted, I think, because his wife didn't want to go along with him or something. It think it was to Illinois or someplace where he was being sent and so he deserted. By the way, that was his bigamist wife. Later he reported back to the company and was given a court martial. He spent six months in the guard house. Then he got a dishonorable discharge, but says he was later reinstated. They let him in a second time which was very surprising, of course. Then he deserted again and he reported back for the second time and was given a court martial of three months. That's what I found out from him this time. It's the first time I was able to get a clear statement from on the subject.

Q. Now, Dr. Cohen, did you at my request give us a report on these findings, these are not on the record, on January 21st, or rather August 21st?

The Deputy Commissioner: Have they been offered in evidence?

Mr. Smith: They are not in the record, I think you have a copy.

Mr. Bowen: Wait a minute; say that again.

Mr. Smith: You have a copy of all the medical reports that I have put in.

Mr. Bowen: No, I haven't.

290 Mr. Smith: You have copies; I gave them to Mr. Myers. I am just referring to them now.

Mr. Bowen: Well, of course, I don't—

The Deputy Commissioner: Don't let's get into a discussion. I want you to both understand that they are not in evidence.

By Mr. Smith:

Q. Now on August 3rd you made your first report which is substantially the same as to what you have told us from the record. A. I forgot: I wrote to Miss Rosendorf at the completion of the examination on April 13th, 1937:

"Examination of this patient was completed today.

I believe he is suffering from severe traumatic neurosis and that as a result he is unemployable."

That is what I wrote to Miss Rosendorf on April 13th, 1937.

Q. Now, in your reports that you have been instructed to give from time to time as this case has progressed, you have indicated that this claimant here is suffering from a brain injury. I would like for you, referring to the clinical report or your own findings whether they are on record or not, to give us the evidence that you know of that would indicate a brain injury. A. Well, I have made my diagnosis on the history of the case and on Dr. Shugrue's examination. I don't claim to be a neurologist and I can't talk on the neurological end of it, 291 but I am taking Dr. Shugrue's word for it and I felt the history obtained from him and the social history obtained from Miss Rosendorf plus the history obtained from his wife pointed to the fact that here was an individual who got along, at least average, up until the time of the injury and since the injury he has been suffering from these various signs and symptoms which are pretty typical of a traumatic neurosis.

Q. Now, you have become very familiar with the case? A. Yes.

Q. Over a period of time, and you are familiar with his condition. Do you know of the fact that he was taken to Baltimore? A. Yes.

Q. Have you talked to him since he returned from the hospital there? A. Yes.

Q. Did you notice any change in him at all? A. Yes. He seems to be better since that time.

Q. Now, do you recall his being arrested in January, 1938, that is this year, and your subsequential testifying for him in Police Court as to his condition? A. Yes, I testified in Police Court for him.

Q. What did Kicklighter tell you as to that accident? A. Kicklighter told me he was standing on the corner here in the city, and a good-looking woman came 292 up and stopped and asked him if he wanted a job and he said he would think about it and she seemed to insist on asking him—

Mr. Bowen: Mr. Smith, that has nothing to do with his physical condition.

Dr. Cohen: That has something to do with his mental condition.

The Deputy Commissioner: It is part of the history in the case; it may be important.

Mr. Cohen: And so he decided he would drive her around and she not only intimated that he might be rewarded by money but there might be some other reward. So he took the job. Three days later, he drove off (He says he don't remember anything about it but as I remember it from the newspapers) he drove up on the curb and he was arrested and taken to the precinct station. He had no license to drive and he had amnesia, as I recall it, from what happened from the time he drove up on the curb until the time he was in a cell. Then the case came up after that and I testified that he was incompetent. I was forced to say he was insane and as I was given no choice, and I had to tell them he was of unsound mind. He certainly was incompetent to know what he was doing.

By Mr. Smith:

Q. Well, now, Dr. Cohen, you have heard very
293 little of the testimony here. A. All I heard was Dr. Stuart.

Q. Yes, but you are familiar with the case as a whole and I want to ask you this question: Assuming that the claimant, Raymond W. Kicklighter began working for the Potomac Electric Company on July 18th, 1933, and—

The Deputy Commissioner: Are you going to read the same hypothetical question as you did before? Suppose you give it to him to read.

Mr. Bowen: First of all, I want to object to it because the doctor has disqualified himself. He has admitted that he is not a neurologist.

Dr. Cohen: So I am a psychiatrist. I'd like to say that I am the only one in this room who can say he belongs to the American Board of Neurology and Psychiatry.

The Deputy Commissioner: The objection is void. Would you mind reading that yourself?

Dr. Cohen: I am a psychiatrist.

Mr. Bowen: I object to your qualifications as to answering his questions (The paper containing Mr. Smith's hypothetical question was handed to the witness)

(A short recess was taken)

By Mr. Smith:

Q. Assuming the facts as you just read them, what is your opinion as to this man's ability to work?

Mr. Bowen: Let me see that question, please.

294 Mr. Smith: This is the same question I asked Dr. Gillis this morning.

Mr. Bowen: How does the record stand?

The Deputy Commissioner: The repetition of the same hypothetical question that was asked this morning.

Mr. Bowen: Assuming those facts?

Mr. Smith: Yes; except that there may be a change in my asking him the direct question right now.

Mr. Bowen: I see.

Dr. Cohen: That's a hard question to answer catagorically. I think that he certainly is not able to work as he was previous to the accident. There is no doubt about that. But he could do very simple work under close supervision is another question; I don't know, he might be able to.

By Mr. Smith:

Q. Do you think that his present condition is the result of the injury sustained on May 24th? A. Yes; I do.

Q. What would you say is the extent of his disability?

Mr. Bowen: He has already answered that.

Dr. Cohen: I couldn't say; that's like the first question. I am sure he is not able to do the same sort of work he did before, but again, he might, as I say, be able to do some simple work under close supervision.

By Mr. Smith:

295 Q. Now, will you tell us what you base your present opinion on? A. Well, on the history obtained from various sources and repeated examinations of the patient.

Q. Dr. Cohen, what is a "constitutional psychopath?"

A. A "constitutional psychopath" is an individual who throughout his life shows evidences of instability. In childhood, in early manhood, and later on he has difficulty getting along. In school, he is unreliable, given to falsehoods, shows a temper, outbursts, and is apt to have fear as a child. He grows up he is unable to make an occupational adjustment. He keeps changing from one occupa-

tion to another without benefiting himself. He is a rolling stone, in other words, he is often considered to be the "black sheep" of the family. He is constantly making resolves to do better and never being able to fulfill them he is apt to be in hot water as far as the police and law go and create a great deal of disturbances in the family, cause a lot of unhappiness to everyone around him, and so forth. He would be known for his untruthfulness, his unreliability, and for his alcoholism.

Q. You know this man pretty well by now, the circumstances including the history of the case. Would you say that prior to May 24th, 1935, he was a constitutional psychopath? A. No; I never considered him as such.

Q. How would you classify him in that respect at 296 the present time? A. I don't think he is a constitutional psychopath now or then. I don't think psychopaths are made by being hit on the head.

Q. What would you call him now in medical terms? A. Suffering from traumatic neurosis.

Cross-Examination

By Mr. Bowen:

Q. Doctor, you had a report out here a minute ago—

Mr. Smith: May I interrupt at this time; I neglected to offer this in evidence. I think it should be in evidence. That is, the report of the clinic in Emergency Hospital where Kicklighter was treated.

Mr. Bowen: What does it include, Dr. Shugrue's examination, if it does, I object unless Dr. Shugrue is available. I have no objection if Dr. Cohen or any other doctor taking the history of the patient if he was able to formulate some opinion, but I do object, Mr. Commissioner, in the attempt to put into the record what Dr. Shugrue would say unless he was here.

Dr. Smith: Dr. Shugrue's statement isn't in the record. It is the report of Dr. Cohen turning the case over to him.

Mr. Bowen: But I object to it.

The Deputy Commissioner: All right. Now with respect to that as far as Dr. Shugrue's report is concerned, it may be considered as Dr. Cohen has done in 297 formulating his opinion as a basis for the history of

his case. Otherwise, the objection is sustained, on the ground that the employer should have the right to cross examine the maker of this as to his opinion."

Mr. Smith: Well then, the balance of the record excluding Dr. Shugrue's report, I think that should be admitted.

The Deputy Commissioner: No objection on that?

Mr. Bowen: I don't know; if you would just tell me what it consists of. I haven't seen these papers altogether.

The Deputy Commissioner: What is that the Emergency Hospital record?

Dr. Cohen: Yes.

Mr. Smith: This is the record at the time he was admitted to the hospital and this is two years later.

The Deputy Commissioner: I see the subsequent record.

Mr. Smith: Yes; this is two years later.

The Deputy Commissioner: All right; the only thing to be admitted at this time then would be "the two letters to Miss Rosendorf, one dated April 6th, 1937, and one dated August 31st, 1937; a letter to Mr. Smith; a report to Mr. Smith dated January 1st, 1938. Received in evidence as Claimant's Exhibit 1.

By Mr. Bowen:

Q. Dr. Cohen, do you know whether this report contains Dr. Shugrue's diagnosis? A. No; that's all my writing. It doesn't contain his diagnosis.

298 Q. Dr. Cohen, you read from this social history, did you not? A. Yes.

Q. Did you intend to overlook the statement in here that Mr. Kicklighter was in the army, stationed in Baltimore, Maryland until discharged from the army in 1930? A. Did I intend to do what?

A. Omit that for any reason? A. I didn't read that.

Q. I beg your pardon; you haven't seen this at all then. A. I said that I read that when it first came in in 1937.

Q. Well, have you taken these facts into consideration? A. I did, yes.

Q. Well then, I want you to go into that. Here is a statement in here that he was in the army until discharged.

A. Yes.

Q. Now, there is another statement in here about Mr. Kicklighter getting into trouble about a watch. A. Yes; I know about that.

Q. He went to jail for six weeks. A. That's right.

Mr. Smith: I object to that; there was no conviction in that.

The Deputy Commissioner: Was that before or
299 after the accident?

Mr. Bowen: Yes, before the accident.

Mr. Smith: It was all before the accident; there was no conviction.

The Deputy Commissioner: The doctor said he considered that.

Mr. Bowen: I just wanted to bring that fact in.

Dr. Cohen: Well, I think if you will read it you will see the circumstances are such as not to blacken his character at all.

Mr. Bowen: I am not trying to blacken him.

Dr. Cohen: There was no particular reason for your mentioning an incident of that sort.

Mr. Bowen: I think facts of that sort should go into the conclusion of these physicians. Now this question of a watch occurred—when was the date, do you know?

Mr. Smith: No objection of your reading it into the record.

Mr. Bowen: (Reading from the social history of Mr. Kicklighter) "Shortly after their marriage, Mr. Kicklighter went to jail for six weeks. He loaned a man whom he knew in Hagerstown some money and when he requested reimbursement, the man was unable to pay him, giving him a gold watch in place of the money. After coming to the District of Columbia, Mr. Kicklighter needed cash to take care of himself, so he pawned the watch. It

300 was a fifty dollar watch and when he went to get it at the pawn shop, the police were waiting for him and he was arrested and spent six weeks in jail. They told him that the watch was only one of a great many that had been stolen and they attempted to make him tell where the others were. The whole matter was a great surprise to him, but he still remembers the six weeks in jail very bitterly.

Mr. Smith: Mr. Commissioner, I'd like to say that it may be hard for me to get the attorney that represented Kicklighter at that time when he was completely exonerated of that, but I think there are enough variations on this case and I don't think that is material to the issues indicated. However, if it is felt that this attorney is desired I will make an effort to get him here.

The Deputy Commissioner: We will receive it in evidence for what it is worth.

By Mr. Bowen:

Q. Dr. Cohen, this social history contains a certain subdivision marked "Medical History" and it states this, which I understood you to take into consideration:

"The physical examination stated that 'he was a fairly healthy appearing white male, tender over superorbital right—'" A. Suppose I read that into the record for you:

"Mr. Kicklighter examined at Gallinger Hospital on August 24th, 1936. He complained of dysepsia; gas crowding around the heart and losing 10 to 18 pounds
301 in the past year. He also stated that he was struck over the right eye with a heavy piece of iron about a year ago and has had pains and headaches ever since. The physical examination stated that 'he was a fairly healthy appearing male, tender over the supraorbital right. Both eyes appeared normal. Teeth are bad. Blood pressure 124-80. Heart negative. Lungs clear. Extremities negative. Abdomen soft. Tender over appendix and mid-epigastrium. Diagnosis:

Chronic appendicitis. (Possible peptic ulcer.) It was the opinion of the examining board that Mr. Kicklighter was employable. Some signs of chronic appendicitis were present and if continued should warrant hospital care."

Q. Now, in view of that opinion, what consideration would you give to that? A. Well, I read it at the time but I must admit in two cases out of three I find their diagnosis at Gallinger's wrong.

Q. What consideration did you give to "some signs of chronic appendicitis were present?" A. Well now, I left that to Dr. Silverman; he did the medical examination and he mentioned no possibility of chronic appendicitis.

Q. You made no effort to examine him? A. I made only a psychiatric examination.

Q. So that you aren't able to say now that he showed signs of chronic appendicitis? A. Oh yes, I am. He
302 doesn't show any signs of chronic appendicitis.

Q. He didn't show any at that time? A. I know the signs of "chronic appendicitis."

Q. Now, you spoke of that man making a revelation to you, or some words to that effect, on last Tuesday. A. Revelation?

A. Yes; when he admitted that he had been a bigamist. A. His first wife was a bigamist; his first marriage was a bigamist marriage, but he was not the guilty party.

A. You don't mean that this man— A. I mean to say, that his first wife from the first marriage was the bigamist. He was not the bigamist.

Q. How many wives has he had? A. Two; that is if you consider a bigamist wife a wife.

Q. Are you sure that hasn't had three? A. I didn't go that far.

Q. Well now, this desertion from the army, what date did he give you, or what dates of desertion did he give you?

A. I think I have that on a piece of paper here.

Q. I'd like to have it. Q. No; I haven't got it either. I don't remember.

Q. It was before the accident? A. Yes; no doubt about that.

Q. And what consideration have you given this
303 man as to whether or not he is of that group?

A. Which group?

A. A group, or a type of man that has always shown some deficiency in his development, his mental development. A. Mentally deficient? Did you say he was mentally deficient?

A. I said his mental development.

The Deputy Commissioner: Deficient in his mental development, those are the words that he used.

Dr. Cohen: I never thought he was deficient in his mental development.

By Mr. Bowen:

Q. I am asking you. A. No.

Q. What type of group would you put Mr. Kicklighter in? A. Traumatic neurosis.

Q. I mean what type of individual as to his social status. Did you get the impression from him that he was the kind of a man that was always able to take emergencies as they came up and not be affected by them unduly? A. Well, I think he showed poor judgement twice in the army when he deserted.

Q. Well, that's what I am trying to get at. Is he the type of individual that one day would be happy and the next day reverse? A. No, sir; I don't see any signs of that unbalance. I say he showed very poor judgement on two occasions in the army when deserting.

Q. What reason did he give for desertion? A. The first time he deserted because he was married and his company was broken up and he was going to be sent out to the middle west somewhere and his wife didn't want to go, and so he deserted.

Q. Did that indicate to you his strong mentality? A. I find it difficult to use a phrase like "strong mentality." Poor judgment, if that is what you mean.

Q. How about the second time he deserted? A. I am trying to remember why he deserted the second time. I don't remember except that my impression is that again it was poor judgment.

Q. You don't put this man in the class of one having a fear complex? A. No; if I understand what you mean.

Q. What do you understand by "one who possesses a fear complex?" A. I guess that's the layman's term.

Q. Can't you interpret it without me giving you the medical term. What is "fear complex?" A. Anxiety neurosis.

Q. And having fears that are unfounded? A. That's an anxiety neurosis or a phobia.

Q. Take the person who is happy one day and unhappy the next or morbid, or has hallucinations.

A. That has nothing to do with what I think you mean by "fear Complex." "Anxiety neurosis" is an individual who suffers from a heart disorder marked by palpitation, and fears of dying, fainting, and he suffers

greatly from various phobias. Now, I don't see how that applies to him at all.

Q. Don't you think that the fact that this man deserted twice from the army would have caused him to have some fears or hallucinations? A. No, sir.

Q. Something must have caused him to do that. A. No; because at both times he returned but the first time he was A. W. O. L. 30 days and the second time 12 days.

Q. Your history shows he got into trouble over here about a watch? A. Yes.

Q. Would you say anything about a man who showed that he was fearing some consequence or something would happen to him? A. I don't believe I understand your question.

Q. Well, what excites that fear in that type of an individual? A. What excites an anxiety neurosis?

A. Yes. A. Anxiety neurosis occurs in an individual generally speaking, I am speaking in general terms now, who has been under great stress for a long period of time, who then runs into some catastrophe or difficulty.

Q. Does that come to people as the result of an accident or does it come to them without an accident occurring?

A. Without being in an accident? Why, I have seen it occur in people who have just witnesses an accident, but if I may make myself clear, when I speak of "traumatic neurosis" I am not speaking of "anxiety neurosis" any more than I would speak of architecture when I am speaking of painting.

Q. Well, let me ask you this: What objective findings have you? A. Objective findings? His sensorial difficulties stood out.

Q. What else? A. His sensorial difficulties?

Q. Anything else? A. Yes; the record which accompanied it. The testimony of his wife and my observations.

Q. Are they objective findings? Aren't they subjective, aren't they dependent on the history he has given you?

A. I said, what I found out from his wife.

Q. All right; let's ask and see what you did find. A. For instance, Mr. Smith had told me that Mr. Kicklighter was supposed to come to the clinic. He didn't show up

307 and was supposed to come to the clinic. He didn't

show up and then the next time I asked him where he was he said, "I didn't remember that I was supposed to come."

Q. All right; let's take these difficulties as you have given them. Have you seen him at any time dizzy? A. You mean falling over?

A. Have you seen this man dizzy? A. He has complained—

Q. No. A. What do you mean by seeing the man dizzy?

Q. Actually dizzy; falling over; fainting. A. No; I haven't.

Q. What have you seen of him that was not dependent on what he told you? A. Nothing.

Mr. Bowen: That's all.

Dr. Cohen: What do you mean, like a convulsion?

Mr. Bowen: No; did you observe this man have anything objective?

Dr. Cohen: I was taking the sensorial test and I could see he was unable to do simple multiplication and addition.

Mr. Bowen: I don't care whether he can add or not. Did you see this man dizzy? I am referring to his health and not to his multiplication.

Dr. Cohen: No; but we can only consider a case
308 by considering the whole individual.

Mr. Smith: I object against his arguing with the witness.

Dr. Cohen: I have never seen him dizzy, no.

Mr. Bowen: What else have you seen of him, what other symptoms?

The Deputy Commissioner: He answered that before. He said "Nothing."

By the Deputy Commissioner:

Q. Doctor, did you consider this man as a psychiatric case? A. Yes.

Q. And when you render a diagnosis of "traumatic neurosis is that a psychiatric finding? A. It is.

Q. You don't know whether or not he had any brain damage? A. Of my own knowledge, no.

Q. If he had, would it make any difference? A. In my opinion?

Q. Yes. A. Why, it would be confirmatory, yes.
The Deputy Commissioner: That's all.

Russell S. Dawson, 3935 7th Street, Northwest, Washington, D. C., called as a witness on behalf of the claimant being first duly sworn, testified as follows:

309 By Mr. Smith:

Q. Mr. Dawson, what is your occupation? A. A linesman.

Q. And by whom are you employed? A. District Government, electrical department.

Q. Did there come a time when you saw this man, the claimant, Raymond W. Kicklighter, did there come a time when you saw this claimant here? A. Yes.

Q. Did he work with you? A. Yes, sir.

Q. Under your direction? A. Yes.

Q. Can you tell us when that was? A. I wouldn't be positive as to the date but I think it was in 1936; I am not sure of that. The latter part of 1936, I believe.

Q. Was it around October 22nd? A. It was in the fall.

Q. 1935? A. It was in the fall of the year, but I wouldn't recall what year.

Q. All right. I want you to tell what you observed as to his work, what kind of a man he was, what he did, and just generally what you thought of him. Q. Well I
310 had all the chance in the world to observe him because I was in charge of the gang of men that was working there and he was a man of ability to go ahead. That is I thought he was, but I can't say whether or not he was. I was very much disappointed in him.

Q. Did he ever complain to you of any ailments while he was working? A. No, sir.

Q. Did he ever tell you he had headaches? Or anything like that? A. Not that I recall.

Q. Did he ever appear to have any dizzy spells? A. No, sir.

Q. Well, what kind of work did he do? A. Well, there seems to be a difference of opinion there. Mr. Kicklighter says that he was hired out as a linesman's helper; my superintendent says he was hired as a linesman. I can't say which is correct; I don't know.

Q. What did he actually do? A. Tried to climb but he climbed very little. He was up a few poles but was no benefit at all as a linesman. What he was hired for I don't know because of the difference in the two statements. I don't know which is correct.

Q. Do you know whether or not climbing equipment was issued to him? A. Yes, sir; it was.

Q. It was issued to him to climb? A. Yes sir; I was there and helped him with his climber's equipment.

Q. But you say he couldn't climb poles? A. He had been up poles but he was of no benefit after he got up there. To my knowledge he had never accomplished a thing after he was upon the pole.

Q. In other words, your opinion of him as a workman was never good? A. I couldn't recommend him as a linesman at all.

Cross-Examination

By Mr. Bowen:

Q. Did he ever tell you when he was not doing his work satisfactorily that he was not getting enough to eat? A. Yes; several times.

Mr. Bowen: That's all.

Earle A. Horsley, 3536 Southern Avenue, Southeast, Washington, D. C., called as a witness on behalf of the claimant, being first duly sworn, testified as follows:

Direct Examination

By Mr. Smith:

Q. Officer Horsley—

Mr. Horsley: Mr. Commissioner, may I make an inquiry? I realize the Compensation Board had the right to summon witness down here. However, I also wish to find out who is supposed to pay me for my time.

The Deputy Commissioner: Whoever summoned you. In this case, Mr. Smith.

Mr. Horsley: That's all I wish to find out.

By Mr. Smith:

Q. Officer Horsley, you are a private attached to No. 1 precinct of the Police Department? A. That's right.

Q. And how long have you been attached to that precinct? A. Twenty years.

Q. Directing your attention to January 15th, 1938, did you have occasion to make an arrest of the claimant here?

A. That's right.

Q. Would you state the circumstances in detail, what you found when you made the arrest? A. About 12:00 o'clock on that particular date, that Mr. Smith mentioned, why my attention was called to the fact that an automobile had driven over the curb and come within about an inch of striking the Fanny May candy window that's on E Street between 10th and 11th on the South side. I walked across the street, over to the car, and this gentleman who was was driving was hunched over the wheel. I just looked

at him for a moment to see what could be the cause
313 of his apparent condition and I spoke to him and

I didn't receive no response and then I reached down and pulled his head and I asked him to blow his breath at me and there was no response again. After I had asked him several times why he sort of blew his breath and I smelled nothing. Then I noticed his eyes were rather peculiar, had a peculiar stare in them and having seen numerous occasions of epilepsy I assumed that this was one of them and therefore, I asked him to move into the back seat which he did after I asked him two or three times, and I backed the car off the sidewalk so as not to attract too much attention. Then, still not being certain whether he was an epileptic or what, I had another policeman call the ambulance and the doctor arrived on the scene and took him over to Casualty Hospital and then upon checking into it I found that there was no record of him ever having a permit. There was a record of his having had a permit, but he had not renewed it. I asked the doctor what his condition was and what could have caused him to have done that and he said it was "Grand Mal." So it being impossible to charge the man with anything other than failing to have a permit, that's what I charged him with. Then I investigated the permit situation and found that he had been down to the Ford Building three days previous to get a renewal on his permit and he only made 30 on his test and they had rejected him. And I was told at the time that the car was on the sidewalk

314 that he had had a permit and the party that he was driving was taking him down to get it. It seems it was understood that he had one, and as a result I charged him with not having a permit or an operator's license.

Q. Who occupied the car with him? A. I believe there was a party by the name of—I forgot the name—I believe it was Amelia Crawford.

Q. Do you recall checking up as to who the owner of the car was? A. Yes, I believe she was the owner.

Q. Amelia Crawford. Was her address 218 E. Street, Northwest? A. I don't remember.

Q. Did you have any conversation with that lady? A. The only conversation I had with her was as regards to whether the man had a permit or not.

Q. Was it necessary for you to get her name and address to make out the report of the accident and did you do that? A. Yes.

Q. Did you know her before then? A. About ten days before that I knew of her. I had seen her.

Q. Did you ever know her by any other name? A. Well, I believe she married a man at the Astor Hotel and he went off and left her.

315 Q. Did you ever know her under the name of Boswell? A. No.

Q. Was she engaged in selling furniture? A. I don't recall.

Q. At that time? A. I don't recall any recollection of that.

Q. Do you know what her occupation was? A. No.

Mr. Bowen: No cross examination.

Catherine L. Dice, 915 First Street, Northwest, Washington, D. C., called as a witness on behalf of the claimant, being first duly sworn, testified as follows:

Direct examination

By Mr. Smith:

Q. Mrs. Dice, you are acquainted with the plaintiff, Mr. Kicklighter? A. Yes.

Q. How long have you known him? A. A year ago last March; I am sure it was March, it may have been February but I don't remember.

Q. Did he live at your house? A. Yes, sir.

Q. As a roomer or tenant? A. A tenant.

Q. I want you to tell of anything unusual about him
 316 or his actions or anything that he did. A. Well, he
 was very peculiar at times. He's sit outside at times
 and wouldn't speak to me or anyone in the house; he would
 just sit there with a kind of moody look on his face. Other
 times he would hold a conversation very pleasantly, but he
 was more often the other way. I didn't know what to make
 of him. He was a very peculiar man at times in fact, every
 one in both houses remarked about how peculiar he was.

Mr. Bowen: Wait a minute. We object to what anyone
 else said.

Mr. Smith: Just tell us what you know personally.

Mrs. Dice: The lady who lived in the house next store, she
 lived there about a week and a half, and one day I was
 standing near my front window and he jumped out that
 window on the first floor. It is a basement and a ground
 floor over the basement, and that's where he jumped out
 and I was standing right there in the window and he ran
 right up the street.

Q. Did you later talk to him regarding that? A. Well, I
 didn't talk to him right away about it but I spoke to his
 wife and she said—

Mr. Bowen: Objection.

The Deputy Commissioner: Never mind what she told
 you, just tell us what you know, your own observations.

Mrs. Dice: Well, he himself had told me that the
 317 man upstairs had been having some trouble with his
 wife. He had been drinking and he was beating his
 wife. He said this man was after him for some reason or
 other and he had some kind of a stick and he was afraid of
 him and that's why he had jumped out the window.

Q. Did they subsequently leave? A. Yes, sir, they did.

Q. Do you know why they left? A. Well, I think the
 reasons were, I think, that he was afraid of this man up-
 stairs.

Q. Did you tell you of any trouble with him that you
 know of? A. Not that I know of.

Q. Did you know him before May 24th, 1935? A. No; I
 didn't.

Q. You have only known him since that time? A. Yes.

Mr. Bowen: No questions.

Marian R. Schwartz, 7444 Georgia Avenue, Washington, D. C., called as a witness on behalf of the claimant, being first duly sworn, testified as follows:

Direct Examination

By Mr. Smith:

Q. Mrs. Schwartz, for the purpose of clarifying the record, you were recently married, and prior to that
318 time your maiden name was Rosendorf? A. Yes.

Q. You are the Miss Rosendorf referred to as the case worker that handled the Kicklighter case? A. Yes.

Q. Will you tell us briefly just what you knew about Kicklighter when his case first came to your attention? A. It was in March, 1937. Mr. Kicklighter came to us, I believe, and he told me he had just come in the city with his family who at the time were waiting in the bus station. He secured rooms for that night through a man that he met in that station and I verified that the next day, and visited the home, and saw Mrs. Kicklighter and the children. At that time Mr. Kicklighter told me, I believe it was, I have so many families it is hard to recall exact dates, I believe it was in November, 1936, that he had taken the truck and driven down south. He couldn't understand why he had done that especially since he had a young baby, who I believe was about a year old when I first saw the family.

Q. Well now, they came here and applied for relief? A. Yes; he applied for relief and told us he just came to the city.

Q. And did you after hearing of his condition refer him to the Emergency Hospital? A. I did.

319 Q. And since that time you have seen him from time to time? A. Yes.

Q. Do you know anything unusual of your own personal knowledge as to his actions and as to his statements during the time you worked on this case? A. Well, he complained, the reason I referred him to the Mercy Hospital was that he complained that he just couldn't remember. He couldn't understand why he did a lot of things. When I first saw him, the afternoon that he came back to the city, he told me that he just couldn't understand why he had taken a young baby down in the truck. He told me several other things and just couldn't explain to me why

he had done them. He just didn't know the reason for them.

Q. Did you ever know whether or not he tried to get work or wanted to work from time to time?

Mr. Bowen: What was that question?

By Mr. Smith:

Q. Do you know whether he had tried to get work or wanted to work? A. Whether he asked me for work? A. Yes.

Q. Whether he has tried to get jobs? A. Yes; did he want to work? A. Yes; I think he wanted to work
320 but he was going to doctor. Of course, we always take doctor's statements. That's the way we classify our people as employable and unemployable.

Q. And the doctor advised you—

Mr. Bowen: Wait a minute. I don't think the doctor—

By the Deputy Commissioner:

Q. What do you know about his attempts to get work? Do you know anything about them? A. About his attempts to get work?

Q. Has he made any attempts to locate any work? A. Not through the W. P. A., and that's the only thing that I could certify him to if we had a statement from the doctor that he was able to work.

The Deputy Commissioner: Is that all, Mr. Smith?

Mrs. Schwartz: He told me he got a job driving a car, and I believe that's when he had that accident. Let's see if I can think of anything else. He has told me many times that he wishes he could work because the assistance he is getting is not adequate. He just wished he could go to work.

Mr. Smith: That's all.

Cross Examination

By Mr. Bowen:

Q. Have you a report of the examining board which shows that Mr. Kicklighter was employable? A. Of the examining board of the hospital?

Q. Yes. A. Of what hospital?

321 Q. I mean of the examining board; I don't know just what hospital it is connected with but it is among these reports. A. I have records from Dr. Cohen, is that what you mean?

Q. No. Is this a letter signed by you? Just take this paper and see if that isn't your signature and read it. A. This isn't my signature. This is signed by my supervisor; I wasn't there.

Q. It is all right; It is sufficient. A. I didn't know the family in 1936. However, I will tell you something about this board. This is a board which isn't connected with the Public Assistance Division at all; It is connected with the Health Department of Gallinger Hospital, is that what you mean?

Q. Yes. A. Do you want me to read this?

The Deputy Commissioner: Well, I don't know whether that is proper evidence or not. That isn't her statement. She wasn't connected with it.

Mrs. Schwartz: I have never been connected with the Health Department, Your Honor, but I probably have this record in my office.

Mr. Bowen: That is over your signature, isn't it?

Mrs. Schwartz: Yes. That isn't my signature, it
322 was signed in my absence by my supervisor. She has the authority to do that.

Mr. Bowen: That's all.

F. W. Utrecht, Kensington, Maryland, called as a witness on behalf of the employer, being first duly sworn, testified as follows:

Direct Examination

By Mr. Bowen:

Q. You have been asked to produce, have you not, war records of Mr. Kicklighter? A. Yes.

Q. Will you produce them? A. Well, there are no war records. The man wasn't in during the war.

Q. Well, then what records do you have? A. From the time of his enlistment in 1925 until he was finally discharged in 1931.

Q. I want you to go over them and give us the record of his medical treatment while in the army.

Mr. Smith: I would like for the sake of the record to say that I feel that this is all immaterial to the issues in the case.

Mr. Bowen: You claim this man to be—

Mr. Smith: I feel it is immaterial and irrelevant to the issues in the case. I want the record to show my

323 The Deputy Commissioner: As to what his previous medical history was? I think it is very important.

Mr. Smith: Well, he was in good medical health.

The Deputy Commissioner: Well, that's what we are trying to find out. If there are any facts to be brought out in that respect we would like to hear them.

Mr. Utrecht: Well, this letter here contains his full medical record.

By Mr. Bowen:

Q. What is the date of the letter? A. This is a letter dated February 8th, 1938, addressed to Mr. Reppard W. Kicklighter, 915 First Street, Northwest, Washington, D. C. Now the first part of it gives his army record. You don't care for that, do you? That is his service when he enlisted and when he was discharged.

Q. I want facts. A. "Reference is made to your letter of February 4th, requesting your military and medical record." Now, this is the letter from the adjutant general. "The records of this office show that Reppard W. Kicklighter Army Serial No. 653120 enlisted January 7th, 1925 and was dishonorably discharged June 30th, 1937 by purchase of service battery sixth field artillery. Enlisted January 15th, 1927 was dishonorably discharged December 9th, 1929 at Fort Hoyle, Maryland pursuant to a sentence of a general Court Martial on account of desertion. Not
324 that desertion is incorrect. As borne out by the records, it is a mistake. He was charged with desertion but found guilty of absence without leave only. "Enlisted July 15th, 1930 and was dishonorably discharged May 14th, 1931 pursuant to sentence published in G. C. M. O. No. 166 Headquarters 3rd Corps Area, Baltimore, Maryland, dated May 11th, 1931" The medical records show that he was treated March 21st to 24th, 1925 four wounds, contused, moderate dorsal surface right hand. March 31st to April

18th, 1925 for cellulitis acute superior dorsum of right hand. January 6th to 9th, 1927 for wounds contused actue dorsal surface of left wrist. April 11th, 1927. For fracture, simple and complete, sixth rib. October 25th to October 29th, 1927, for:

1. Cellulitis acute fifth finger left.
2. Dermatitis face, chest, and back.

April 21st to May 16th, 1928:

1. Under observation of angina pectoris.
2. Under observation for hyperthyroidism one and two not found.

June 7th to 17th, 1928:

1. Under observation for cardiac disease; no disease found.

July 1st to August 10th, 1928:

1. For tonsilitis, chronic, follicular, bilateral.
2. Observation for myocarditis, chronic, not found.
3. Observation for endocarditis, not found.

325 October 15th to 17th, 1928:

1. For gastritis catarrhal, acute.

December 14th to 22nd, 1928:

1. For bronchitis acute, catarrhal, moderately severe.

December 20th to 24th, 1930.

1. For dermatitis, chemical, moderately severe.

January 22nd to 25th, 1931.

1. For nasopharyngitis, acute, catarrhal.

Signed, E. P. Connely, Major General, Adjutant General.

Q. Is there anything to add to that? A. In one of the enlistments records in this correspondence we have a letter from a Miss Kane, an affadavit.

Q. I'd like to have that. A. This affadavit is signed by Miss Virginia Kand and was made in the State of Virginia, was sworn to and described the 17th day of July, 1930 before L. D. W. Gerhardt, Clerk of Civil Court, Berkeley County, and the affadavit reads as follows:

"I, Mrs. Virginia Kane hereby declare that I am not the wife of Reppard W. Kicklighter and that I was never legally married to him. When I gave my written consent to his enlistment in the army I was under the impression that I was his legal wife. My marriage to Reppard W. Kicklighter has since then been annulled."

Q. Is that letter from a lady in Baltimore?

Mr. Smith: If your Honor please, we can get all sorts of variations. Now to straighten this all out I suppose we ought to have the clerical court records showing this annulment.

The Deputy Commissioner: I don't know what the value of this is going to be, unless you are going into it for some reason. You know your own case better than I do.

Mr. Bowen: You may proceed.

The Deputy Commissioner: Are you objecting to it?

Mr. Smith: I am objecting to it.

The Deputy Commissioner: On what grounds?

Mr. Smith: It think it is immaterial.

The Deputy Commissioner: I don't know whether it is right now or not. I won't pass on that right now. If you are objecting to it on the grounds that you want to go further into the record to cross examine the maker of those records I suppose I will have to sustain your objection. Are you?

Mr. Smith: Well, I might as well let it go and save time. I won't object to it.

Mr. Utrecht: You wish this letter addressed to Mrs. R. W. Kicklighter dated May 26th 1938?

"Dear Madam: Your letter of recent date requesting discharge of Reppard W. Kicklighter on account of dependency has been forwarded to the Commander General in Baltimore, Maryland. Any further correspondence on the subject should be conducted with him. The Commanding General has the authority to take the final action on this application." Signed, Lutz Wahl, Major General, Adjutant General.

By Mr. Bowen:

Q. What I referred to was from any former wife of his. A. From his former wife?

Mr. Smith: Mr. Commissioner, if we are going to read these letters, I suggest the letters of commendation for the fine work this man has done be read too. I don't see any value in these.

The Deputy Commissioner: Is there a chance we could get copies of those?

Mr. Utrecht: Only on court order.

The Deputy Commissioner: I simply feel that if there is anything pertinent in those records it ought to go in.

Mr. Utrecht: Well, they can be furnished on court order.

Mr. Smith: There are several letters of commendation I understand appearing in the record and I think they ought to go in.

Mr. Bowen: I won't object to anything that is in the record of the War Department concerning this man.

The Deputy Commissioner: Well, you can get anything else you want in.

Mr. Utrecht: You want this? Here is a letter of December 14th, 1929 to Mrs. R. W. Kicklighter, 518 North Eye Street, Martinsburg, West Virginia.

328 "Dear Madam: I have your letter of recent date relative to your husband, Reppard W. Kicklighter, Service Battery Sixth Field Artillery Hospital Confinement at Fort Hoyle, Maryland. Authority has been delegated to order the commander to dispose of cases of this nature without reference to the War Department. Accordingly your letter has been forwarded to the Commanding General, Third Corps Area, 311 St. Paul Street, Baltimore, Maryland, with instructions to investigate the case and take such action as the situation justifies. He will inform you of the final action pending."

Signed, James F. McKinley, Brigadier General, Acting Adjutant General.

Mr. Smith: May I read these please. (Referring to the War Department Records.) (The war Department records were handed to Mr. Smith.)

Cross Examination

By Mr. Smith:

Q. Is it rather unusual for men who once deserted the army to get back into the army? A. It is unusual though it is done.

Q. Will you read this letter. A. This letter is dated July 12th, 1930, Fort Hoyle, Maryland.

329 Subject: Permission to re-enlist. To the Adjutant General, Washington, D. C.

1. I request that I be given permission to enlist in the Service Battery 6th Field Artillery.

2. I was dishonorably discharged by a sentence of general Court Martial on October 29th, 1929 because of desertion.

3. I deserted the service because I was unable to take care of my wife as evidenced by the attached affidavit. I am no longer married and my trouble while in the army does not now exist. The Commanding Officer of the Service Battery, 6th Field Artillery who was the trial judge of the Court which sentenced me to discharge is willing to accept me as a soldier in that organization."

Signed, Reppard W. Kicklighter.

Q. What do you mean by "discharge by purchase?" A. A man after he has served one year in the army may purchase his discharge by paying a certain amount of money in order to pay back the Government for the expense incurred in his enlistment and outfitting and so forth. But, he has got to have good and sufficient reasons for taking his discharge.

Q. Does that record show that's what happened to him after he was permitted to enlist? A. That was all
330 given in the letter I read a while ago about his service and discharge.

Mr. Smith: Would you read this and this please.

Mr. Utrecht: This is a certificate dated July 12th, 1930, Fort Hoyle, Maryland.

"I am the Commanding Officer of Service Battery 6th Field Artillery. If Reppard W. Kicklighter is given permission to re-enlist I am willing to have him under my command."

Signed, R. C. Malone, Captain 6th Field Artillery, Commanding Officer.

And this is a letter dated April 27th, 1938. Addressed to Honorable William C. O. Langford, House of Representatives,

"Mr dear Mr. Langford: With reference to your personal call on April 20th, 1938, relative to Private Reppard W. Kicklighter, I have the honor to advise you that a report has been received in which it is stated that this soldier was granted a furlough from Curtis Depot from December 27th, 1937 to February 5th, 1938. He was absent without leave from March 2nd, 1938. to March 24th, 1938 at which time he reported at Fort Scriven in Georgia. He was furnished transportation from that post to his proper station which amounted to \$28.06 which has been charged to him on the payroll. In view of this indebtedness to the Government he will receive no pay until the end of May

331 when he will be paid approximately \$1.32. This soldier was awarded no fine or imprisonment for being convicted of absence without leave but was restricted to the post for three months."

Very respectfully, Lutz Wahl, Major General Adjutant General.

By Mr. Smith:

Q. Does that record there show each time when he was absent without leave or deserted that he returned voluntarily? A. The reports would show whether he returned voluntarily or was reprimanded.

Q. Will you tell us whether or not the record does show that?

The Deputy Commissioner: It is admitted that Reppard and Raymond is the claimant here?

Mr. Smith: Yes.

Mr. Utrecht: There are a great many short absences which it doesn't state. It only states desertion, it doesn't say whether he was apprehended or he returned of his own accord.

Mr. Smith: That's all.

Mr. Utrecht: —otherwise it would be considered a desertion.

332 The Deputy Commissioner: The case will be considered for further evidence as there are innumerable other witnesses to be heard.

This is to certify that I am the duly qualified and acting official reporter of the Deputy Commissioner, District of Columbia Workmen's Compensation Act, and as such officer, I reported the hearing in the matter aforesaid which came on regularly before the said Deputy Commissioner, on the 28th day of July, 1938, that the foregoing Pages 134 to 316 inclusive, contain a full, true, and correct transcript of Minutes of Hearing.

.....
Reporter.

333 Endorsed: Filed Jan 20 1939 Charles E. Stewart,
Clerk.

United States Employees' Compensation Commission
District of Columbia Workmen's Compensation Act
Case No. 26-827

RAYMOND W. KICKLIGHTER, *Claimant*,

vs.

POTOMAC ELECTRIC POWER Co., *Employer*.

SELF INSURED.

Transcript of Testimony at Hearing Held

August 23rd, 1938.

Before Frank A. Cardillo, Deputy Commissioner.

Harry Krett, Reporter.

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335 United States Employees' Compensation Commission
Before Frank A. Cardillo, Deputy Commissioner
District of Columbia Workmen's Compensation Act

Case No. 26-827

RAYMOND W. KICKLIGHTER, *Claimant.*

POTOMAC ELECTRIC POWER Co., *Employer.*
SELF INSURED.

Transcript of Testimony at Hearing.

Pursuant to notice, this matter was heard before Frank A. Cardillo, Deputy Commissioner, U. S. Employees' Compensation Commission, at 908 G Street, N. W., Washington, D. C. on the 23rd day of August, 1938.

Appearances:

RAYMOND W. KICKLIGHTER,
Claimant.

S. PRESTON SMITH,
Attorney for claimant,
Evans Bldg.,
Washington, D. C.

S. R. BOWEN and H. C. MYERS,
Attorneys for employer,
929 E Street, N. W.,
Washington, D. C.

336 Hearing in this case was called to order at 10:00 A. M. on August 23rd, 1938, in the Office of the Deputy Commissioner, U. S. Employees' Compensation Commission, at 908 G Street, N. W. Washington, D. C. The following proceedings were had:

The Deputy Commissioner: Hearing in the case of Raymond W. Kicklighter against the Potomac Electric Power Company is continued by order of the Deputy Commissioner.

I must remark about the exceptional long record in this case so far and it appears I have afforded both of you gentlemen considerable opportunity to present your evidence. I hope we will complete this record today and it shall be as brief as possible. Both of you will submit whatever evidence you have.

Mr. Bowen: I have spoken, Mr. Commissioner, to Mr. Smith about putting Dr. Morhart on again as he has a slight correction to make in the record. Do you want the record, Doctor? (Hands record to Dr. Morhart who examines same.)

Dr. Morhart, recalled as a witness on behalf of the employer, still being under oath, testified as follows:

Direct Examination

By Mr. Bowen:

Q. Doctor, are there certain pages in the record which you wish to draw attention to for possible correction? A. Yes. "And you sent him back to work?" on Page 178.

"A. Yes, sir. He worked 7 days." Instead of working 7 days he was off work 7 days. That's on Line 337 13. He was off work 7 days. "He worked 7 days." is what is typewritten here.

The Deputy Commissioner: And you want to correct it to what?

Dr. Morhart: "He was off work 7 days." instead of "worked 7 days."

On Page 183, Question 10, "Have you listened to the testimony of Mrs. Kicklighter?", it should be, "Mr. Kicklighter instead of "Mrs. Kicklighter."

Question 18 on the same page, Page 183: "And in view of the kind of accident this man had, and in view of your certifying the man back to work, in view of the testimony and other things that have been narrated, have you formed an opinion as to the genuineness of this claim or not?" The answer is "Yes, sir." instead of "No, sir."

The Deputy Commissioner: It should be "Yes, sir." you say? Well, then that is followed up by another question, "You haven't formed any opinion?" and then the answer is again "No, sir." You say all that is to be corrected?

Dr. Morhart: Yes, sir.

Mr. Smith: I wish to note an objection to that question.

The Deputy Commissioner: Objection is noted. Is that all?

By Mr. Bowen:

Q. If you have an explanation of your answers 338 there you may make it.. A. Oh, there is also a slight

correction I want to make on Line 6. When he came to my office I put in two horsehair sutures and it is type-written "cursory sutures." They were two horsehair skin sutures instead of "cursory sutures."

In my professional opinion, the injury sustained to his forehead over the frontal bone did not involve the bone, and the frontal bone being filled with sinuses, which are about a half inch in diameter as a sponge, and these sinuses in the frontal bone protect the brain from injury when there is a blow on the forehead. The amount of injury he had, I don't think, could have injured his brain through those frontal sinuses.

Q. Any further explanation? A. No, sir; I think that covers it, Mr. Bowen.

The Deputy Commissioner: You may inquire, Mr. Smith.

Mr. Smith: No questions.

The Deputy Commissioner: That is all.

Kenneth Ross MacIntosh, 517 Sligo Parkway, Takoma Park, Maryland, called as a witness on behalf of the employer, being first duly sworn, testified as follows:

Direct Examination

By Mr. Bowen:

Q. What is your occupation, Mr. MacIntosh? A. I am a foreman for the Potomac Electric Power Company.

339 Q. Do you know Mr. Kicklighter, the claimant in this case? A. Yes, I know Raymond Kicklighter.

Q. When did you first become acquainted with him? A. Well, I first became acquainted with Raymond when he came to work for the company in 1933, July.

Q. And are you able, at this time, to recall how Mr. Kicklighter looked then as compared to now? A. I readily recognized Mr. Kicklighter when I saw him in the building here for the first time. He looked exactly the same, perhaps a little fatter, but I don't see any difference in him at all, nothing unusual or peculiar about him other than his ordinary regular way.

Q. What is the kind of work that he performed for the Power Company; what did it involve? A. Well, during the part of Raymond's stay with us, he operated a digging rig. I will tell you what it is. A digging rig is an apparatus

that we have on top of a compressor and this rig requires a person to turn a handle and move a boom around, press another handle, and the clam-shell goes down.

The Deputy Commissioner: I believe that has been described for the record before?

Mr. MacIntosh: Yes, sir.

By Mr. Bowen:

Q. Does it require a man of any great amount of
340 intelligence to operate it? A. Well, Mr. Bowen, outside of the strength required, I should say that a child of 8, 9, or 10 years of age with a little practice could learn to operate it. It is a very simple operation or series of operations.

Q. Was Mr. Kicklighter required to keep this rig in condition and maintain it, make repairs to it? A. No, sir; I have always had a full corps of garage assistants who were always familiar with the compressor works. They did all the repairs. In fact, we wouldn't allow the operators to fool with the machines whatsoever.

Q. Did Mr. Kicklighter perform any other work except running this rig that you spoke of? A. Well, He also operated a straight compressor some of the time, that is a compressor without this digging rig on and that is a purely automatic machine entirely.

Q. And did that require a great or a greater amount of skill than the rig did? A. Well, all you would have to do is turn the switch and pull the cranks. The machine is fully automatic.

Q. You have other employees who perform similar duties of this kind? A. Oh, yes, we have.

Q. How did Mr. Kicklighter rate in your judgment
341 as compared with these operators? A. Well, Raymond was not particularly bright along that line. In other words, there were better operators.

Q. You did consider him to be one of your best operators? A. Oh, no, no sir.

Cross Examination

By Mr. Smith:

Q. Mr. MacIntosh, is it also one of your duties as a foreman to instruct men from time to time in different kinds of work? A. Yes, it is.

Q. Isn't it a fact that on rainy days you take men into the inside and instruct them on the different kinds of work?

A. In the old days we did, but not now.

Q. Was Kicklighter ever a member of one of those classes? A. I don't recall.

Q. You wouldn't say that he was? A. I wouldn't say that he was or wasn't, I just don't recall.

Q. And was it your duty to look after the inspection of these machines and the repair of them? A. It is not my duty, it is the duty of the garage.

Q. You are not the foreman over at the garage? A. No, I am not.

Q. It is your duty to see that the machines are in good working order while in operation on the street?

342 A. Yes, sir; to some extent it is.

Q. Now, you stated, in answer to one of Mr. Bowen's questions, that to operate one of these machines requires no special intelligence outside of strength, manual strength. A. That is right.

Q. Now, where are these machines worked, operated?

A. In the streets in Washington, on a certain set of corners.

Q. And what is the result of the work performed by these machines? A. Well, they excavate a man-hole.

Q. In various parts of the city? A. Yes, and this man-hole is laid off by the assistant foreman or the foreman.

Q. I see, he gives the instructions to the operators of the machines? A. No, he has assistants stand by and the gunmen, there are two gunmen, and they hand the buckets to the men who place it here and there and they really dig the holes.

Q. Is there always a man in charge of that work? A. Yes sir; there is.

Q. Besides this compressor operator? A. Yes, sir, while the compressor operator isn't in charge in a case like that he is merely in charge of the taking of the dirt.

343 Q. Is there ever a time when the compressor operator is the man in charge on the job? A. Yes, there would be some occasions when that would be possible.

Q. How many compressor machines— A. (continuing) That is the brighter ones, the ones that are instructed in that class of work, who are trained along that line.

Q. How many compressor machines would you say, on the average, are working each day? A. Oh, an average of roughly 19 or 20.

Q. And how many foremen do you have? Q. We have, I would say, around 5 foremen.

Q. Five foremen? A. Yes, sir.

Q. Do you have any assistant foremen? A. Yes, sir; we have quite a few and also junior foremen.

Q. How many of those are there? A. I don't recall off-hand, I couldn't really tell you.

Q. Well now, these foremen, these five foremen, do they not go from machine to machine while working? A. Well, yes, they do move.

Q. Are they foremen over any other type of work? A. Well, of course we do more than dig man-holes.

Q. And there are foremen over the other type of
344 work? A. Yes, sir.

Q. And those five foremen can be at machines all the time? A. Well, if they weren't there would be an assistant there, or lead men. We have them on the job and they are trained in that kind of work.

Q. Then it is your testimony that besides the man operating the compressor machine and the two diggers, that you also have another man in charge? A. Oh yes, there is always another man who knows about the work.

Q. Now then, I understand your testimony also to be that Kicklighter himself was not rated, or he isn't in your opinion, very good? A. That's right.

Q. Yet, there were several times, as far as the record is concerned, I don't know whether you know it or not, it shows he resigned. A. I understand that.

Q. And then came back to work? A. Yes.

Q. And each time he came back to work as a compressor operator. Do you know that of your own knowledge? A. Well, I have heard that he resigned several times, roughly around four times. Yes, sir, I have heard of that.

345 Q. Well now, did Kicklighter require any instruction at all before he could operate this machine? A. Well, he would be required to be instructed as to the turning of the crank you know and easing of the boom around and dropping it down and pulling it up and bringing it back. Outside of the crank, you turn the switch.

Q. But he would be required to be instructed as to the lay-out of the different types of conduits? A. That wouldn't be necessary, no sir. That wouldn't be necessary.

Q. That wouldn't be necessary? A. No, sir.

Q. You are sure of that? A. Oh, yes, digging that hole or in a case where a man was on a ditch to watch the two men digging the ditch.

Q. Well, suppose he cut a conduit or a cable or something?

A. Well, his gunmen were sufficiently trained not to cut that. In most every case, in every case I can recall, they are experienced and of many years standing, familiar with the work of operating those machines.

Q. Is the responsibility of the gunman more than the responsibility of the operator of the compressor? A. I would say it was, because the gunman, he is the man with the tool in his hand; he can cut a cable. No one can stop that man.

346 Q. These are mostly colored men, aren't they?

A. Yes, sir; in most cases they are.

Q. Did Kicklighter, before he operated the machine by himself, did he have any instructor go with him on the machine? A. I don't recall that as his starting in is very vague in my mind.

Q. Is it usual for you to just pick a man up and say, "You go ahead and operate that machinery."? A. We give everybody a try on that. Yes, we do. We are very fair about that.

Q. When you give them that trial, isn't a fact that you have an instructor with them? A. We have no instructor, just the man who operates or one of the other compressor operators.

Q. One of the other operators? A. Yes, sir; it's only about five minutes instruction.

Q. You usually choose a man with a great deal of experience to do that, don't you? A. No, we don't, because it doesn't require any great deal of experience. The operation of it is a very simple operation.

Q. Did Kicklighter ever instruct anyone, to your knowledge? A. I never heard of Raymond instructing anybody.

I will be frank with you, no, sir, I haven't. You see, we generally use the men who show up best in that
347 particular class of work and start them off on that.

Q. But you don't know whether Kicklighter ever had that responsibility? A. I don't think he did, because it would have normally come under me to give somebody an order to instruct another man in learning the machine.

Q. How long have you been with the Potomac Electric Power Company? A. Roughly 11 years, really over 11 years.

Mr. Smith: No further questions.

By the Deputy Commissioner:

Q. Was there any necessity for the exercising of care and caution in the operation of both the diggers and the compressors? A. Well, in the operation of the compressor there is really no necessity for care because it is just simply a case of cranking a machine, which anybody can learn, and the turning of the switch. That is all there is to that, and turning it off at the end of the day. In the operation of the other, there are men that say when to stop the bucket and when to pull it up, in other words, the gunmen. One gunman does the work. He says, "O.K. stop." or "O.K., take it up."

The Deputy Commissioner: That is all

Edward B. Ault, 1365 Nicholson Street, N. W., Washington, D. C., called as a witness on behalf of the employer, being first duly sworn, testified as follows:

348 Direct examination

By Mr. Bowen:

Q. What is your position with the Power Company, Mr. Ault? A. I am foreman of the conduit division.

Q. Do you know Mr. Raymond Kicklighter, the man over there? A. I do.

Q. How long do you know him? A. Well, for the past, I would say, two years. Anyway, make it two or three years.

Q. Has he ever worked under your direction as foreman? A. Yes, sir.

Q. Was he under your direction as foreman, assistant foreman, under you when he had an accident on or about May 24th, '35? A. He was.

Q. Were you present at the time he had the accident? A. No sir, I think the accident occurred on 18th and R. I.

was on the other corner of the job between Columbia Road and Florida Avenue, and when I arrived there they told me an accident had occurred and he had been taken from the site of the accident to the hospital.

Q. Well, have you had other operators doing similar work as Mr. Kicklighter had done for the company under your direction from time to time? A. Oh, yes sir;
349 I still have, several of them.

Q. Are you in a position to inform the Commissioner as to the character of the work performed by Mr. Kicklighter as compared with other men similarly engaged, as to any difference, if there be any, in the kind of work performed by Mr. Kicklighter and that required of others doing similar work? A. Yes, sir; he did his work, but you could see that he just wasn't as efficient as other operators. He complained occasionally maybe the equipment wasn't right or this wasn't right whereas other operators in similar situations would go ahead and take care of it themselves. He just wasn't efficient, you know one man is a little more efficient than another man. He just wasn't 100 per cent efficient.

Q. Had he ever been asked by you to instruct any other men who was coming to perform the job of operating a compressor or rigger? Was he ever called upon to instruct anybody else? A. To teach a man to operate a machine?

Q. Yes. A. No.

Q. Was he a man who you would select to teach anyone else how to perform that kind of work? A. No, I don't believe I would.

Q. You remember, or do you remember the condition or appearance of Mr. Kicklighter when he was working under you as compared to how he looks to you now? A.
350 Yes, sir.

Q. Do you see any change in him? A. No radical change, no sir. Looks the same, if anything, he looks a little heavier.

Q. You knew him before the accident, knew Mr. Kicklighter before the accident? A. Did I know him before that?

Q. Yes. A. Oh, yes, he did quite a few jobs for me before the accident.

Mr. Bowen: That is all.

Cross examination

By Mr. Smith:

Q. Mr. Ault, you stated in answer to a question by Mr. Bowen that the character of Kicklighter's work was not very efficient. Now, just what do you mean by that? A. Well, some ball players are better ball players than others.

Q. Did he do his work satisfactorily? A. He did.

Q. That's why he was kept on the compressor machine?

A. That's right.

Q. Did he ever make any serious mistakes to your knowledge? A. No, if he had I would have taken him off the machine, that is any mistakes that were serious to
351 remove him from operating the machine.

Q. But he never made any mistakes? A. No.

Q. Did he ever have any difficulty with the men he was working with? To your knowledge? A. No, he never had any difficulty with them. Sometimes he would complain that some of the laborers that were working with him weren't as efficient as others, and in order to keep him pacified I would remove that laborer and give him a better man.

Q. He was more or less responsible for a particular job given him? A. That's right.

Q. And he had how many men working with him from time to time? A. Probably three.

Q. And was he there usually all by himself? A. If he was on an isolated job as he was at the time of the accident.

Q. 18th and R Street? A. That's right.

Q. That would be considered an isolated job? A. That's right.

Q. On such jobs would he have an assistant foreman with him or anything like that? A. Not constantly, no
352 sir.

Q. Now, did you see him that day before the accident? A. Before the accident?

Q. Yes. A. Yes, sir.

Q. In your inspection or going by there, did you see anything unusual or out of the way on that job? A. No, sir.

Q. Everything was going along in proper order. A. (Witness shakes his head but does not answer.)

Q. You don't know whether or not there was anything wrong with the machine at the time? A. No, there was nothing wrong with the machine.

Q. If you know, tell me who was there at the time of the accident? A. At the time of the accident?

Q. Yes. A. Practically the only men I know would be there were the men I left there with him.

Q. Who was that? A. The three colored laborers.

Q. What are their names? A. Evans, Connors, and Johnson.

Q. Do you recall any time that Kicklighter had any difficulty with one of the colored men working with him?

353 A. Do I recall any time?

Q. Yes. A. Yes, I do.

Q. Will you relate what you know about that? A. It was on a Sunday and we were working on 14th Street between New York Avenue and G Street, and he and one of the boys got into an argument and the boy said that Kicklighter had cursed him and I said that he would have to stop the argument, go back to work and forget about it.

Q. Were you working on that day or were you called out specially? A. I was working on that job.

Q. Do you know whether or not one of those colored men was under the influence of liquor? A. He was not, most assuredly he was not.

Q. You don't recall that. Now, do you recall at any one time when Kicklighter was not at work either because he had resigned or was temporarily away who had his machine? Who operated his machine? A. No, I couldn't say. You mean that particular bucket machine?

Q. Yes. A. No.

Q. Well, who usually filled in his place when he
354 was not there? A. Anyone of the digging operators.

At that particular time I wouldn't like to say who it was as there were several of them.

Q. Did you ever have a colored man operator by the name of Shank? A. He used to operate a digging rig.

Q. And did he from time to time take Kicklighter's place? A. Not when Kicklighter was put on the operating rig. Previously to Kicklighter's being put on the machine there were all colored operators. Then they were removed and all white operators were put on.

Q. Do you ever recall ever telling anyone of the employees that you would like to have Kicklighter back on your

machine? A. You mean previous to the accident or after the accident?

Q. At either time, at any time. A. No, I can't recall.

Q. Isn't it a fact that you have made the expression from time to time that you liked Kicklighter's work? A. I expressed at times that he worked all right, that he did his work.

Q. You liked his work in preference to someone else's? A. No, he did what he was told and that was all I expected.

Q. Do you recall any special job that he did in good time, especially good time? A. No, he was no more efficient or faster than any other operator, no.

Now, the time of his accident, you say that particular week, this happened on a Friday, do you recall whether Kicklighter did much overtime work that week? A. No, I can't say he did, but that's easily found out, the exact amount of work.

Q. But there were times that the men doing this work were required to work overtime? A. They usually do, yes, occasionally.

Q. Put in a full day's work, go home for dinner and come back to work at night? A. No, that's very rare. They usually take maybe an hour or two extra to finish up.

Q. Do you ever have men work late at night? A. We do.

Q. Was Kicklighter required to work late at night? A. I can't recall.

Q. Do you recall any time that he worked as late as 11.00 o'clock at night? A. Not for me.

Q. When Kicklighter first started to work, do you know what he did when he first started? A. With the company.

Q. Yes. A. No, he wasn't under my supervision, when he was first employed by the company.

Q. Was he under your supervision when he first started to operate the compressor machine? A. He was.

Q. Do you know whether or not he had any special instruction in the operation of the compressor machine? A. Well, he evidently had, because I don't believe he would have been put on without any instruction whatever. He would have to have had some otherwise he wouldn't have been able to operate the machine.

Q. It requires a little more intelligence than ordinary laborer's work. A. Yes, that's right.

Q. Do you know the names of any of the men that Kicklighter instructed in operating the rig? A. Instructed?

Q. Yes. A. No, I don't.

Q. Do you know whether or not he instructed Mr. Kirk to operate a machine? A. No, I don't know whether he instructed Kirk or not. I know Kirk, he worked for me.

Q. I mean the schooling they usually have in the shops.

A. I know, I don't recall that he ever taught anyone how to operate a bucket.

357 Q. Are there courses of instruction on rainy days for men who want to operate compressor machines?

A. They do have instruction courses up there, whether they had it at the time Kicklighter was there I don't know.

Q. Did you ever instruct the men in that capacity? A. No.

Q. Who does that? A. That would be the man in charge of the vehicles, and at the time I don't know who that would be.

Q. Would that be the man who just testified, Mr. MacIntosh? A. MacIntosh? I believe he has that capacity now.

Q. Do you know whether or not Kicklighter ever took a man out after instruction to operate a compressor machine by the name of Collins? A. Collins? There was a Collins who worked for me; I don't know whether he instructed that Collins. I don't know.

Q. You don't have any personal feelings against Kicklighter yourself? A. No, I never did.

Q. He never had trouble with other workmen to your knowledge? A. The only trouble he had was as I recall in that instance with the Negro.

Mr. Smith: That is all.

358 By Mr. Bowen:

Q. Mr. Ault, did you make a report of this accident to the company? A. Oh, yes sir.

Q. I show you and ask you if that is the report you made at the time as to how the accident occurred. (Several papers were handed to the witness) A. That's right.

Q. Did you investigate the cause of the accident? A. Did I investigate it?

A. Yes. Q. Yes, sir.

Q. Did you know what caused the accident? A. Yes, sir.

Q. What caused it? A. Failure to couple the safety chain to the place provided for it at the tank, where it coupled to the tank.

Q. Was that the first time it happened? A. The first time?

Q. This failure to check this chain. A. No, I had warned him many times.

Q. Warned who? A. Kicklighter, about linking up the safety chain provided on the air hose for just such purposes.

Q. And that was the cause of this accident on that 359 day? A. Apparently.

Mr. Bowen: That's all.

Mr. Smith: May I ask one more question?

By Mr. Smith:

Q. You wouldn't alter the facts in this case against Kicklighter, would you? A. I don't know of any reason why I should.

Q. You wouldn't alter them in favor of the company because you are employed by the company? A. I certainly would not.

The Deputy Commissioner: That's all.

Mr. Ralph P. Windham, 3148 Mount Pleasant Street, Northwest, Washington, D. C., called as a witness on behalf of the claimant, being first duly sworn, testified as follows:

Direct Examination

By Mr. Smith:

Q. Are you employed at the present time, Mr. Windham? A. No, sir.

Q. You are retired from the U. S. Army? A. Yes.

Q. Now, do you know the claimant, Raymond Kicklighter? A. I do.

Q. How long have you known him? A. I have known him since '27.

360 Q. Since 1927? A. Yes, sir.

Q. I want you just to tell briefly about when you first became acquainted with him and in what capacity you were working and in what capacity he was in? A. Well, I

was mess sergeant in the 52nd Ordinance Company at Curtiss Bay, Maryland, that's when he came there. Well, I understood that he could cook and so I got him into the kitchen.

Q. Now, how long was he with you there, about? A. Well, he was with me from '27 to '29; I think it was May or June '29.

Q. Now, I want you referring just to that time, just to tell briefly what kind of work he did, the type of his work and the kind of man he was generally. A. Well, he was a cook, you see. He would go on duty at 12.00 o'clock today and come off tonight. Then he would have the balance of the day off. In fact, there was one day on and one day off. He was a man you could depend on. He never did miss a meal, you see, and I figured him above the average soldier.

Q. During that time, do you know of your own knowledge whether he ever used alcoholic beverages? A. No, sir.

The Deputy Commissioner: What do you mean by that?

Mr. Windham: I can tell the truth. I have never
361 seen him take a drink, or never seen him under the influence of liquor.

By Mr. Smith:

Q. Did you ever smell it on his breath? A. No, sir.

Q. Now, how was he as to his personal appearance? A. Well, he was neat, in fact he had to be or we never would have kept him in the kitchen. Well, that is one important part of the army, the kitchen, and we are very, very, strict about the kitchen. That's where the food is handled and you have got to know your stuff.

Q. Then, you say he did satisfactory work for a period of about two years? A. Yes, up to two years and a half.

Q. Now, skipping from that time to the present time, when was it you first saw him recently? A. Well,—

Q. You don't know the exact date? A. No, I don't know the exact date, but it was a year ago. Well, I haven't seen from '29 up until that time. I met him out here in the park and he spoke to me, well, I didn't recognize him. That's the truth; I didn't recognize the man. He had changed in appearance and talk and everything else, you see, so I didn't recognize the man. That's the truth. He said, "Don't you know Kicklighter?" and I said, "Yes, I

362 know Kicklighter, but you don't look like the Kicklighter I knew." That's the truth.

Q. And have you seen him very often since then? A. Well, yes; I have seen him quite recently since.

Q. Did you see him at his home any time? A. Yes, I went up to his home once. I met him out here in the park and then I had to go to see his baby. While I went up to the house I saw the baby.

Q. Now, just state briefly what changes you have noted in him. A. Well, he has changed in his looks and he has changed in his talk.

The Deputy Commissioner: How?

Mr. Windham: Well, the man, when he was a soldier, he could hold a conversation and he could talk good sensible talk. Now, sometimes he just flies up, you see, and goes off and don't know what he is talking about. He wanted me to see the baby and I had to go and see that baby; that was all there was to it. I figured there was something wrong with him or me; I didn't know which one. But there was something wrong with one of the two of us.

Cross Examination

By Mr. Bowen:

Q. Mr. Windham, you were connected with the
363 52nd Ordinance Company, is that what it is? A. Yes, sir.

Q. Curtiss Bay, is that the same as Fort Hoyle? A. No, sir; this is right here in Baltimore.

Q. Where is Fort Hoyle? A. Fort Hoyle is up in Baltimore, I believe it is 26 miles from Baltimore.

Q. Do you know whether Mr. Kicklighter was at Fort Hoyle or not? A. Yes, I do.

Q. How long was he there? A. I don't know how long he was there, but he left my outfit in May or June when we were ordered to Savannah. The men who had only a short time to do, if they didn't promise to re-enlist, weren't taken along.

Q. Why? A. Well, if they had a short time, two, three, or four months, and if they didn't promise to re-enlist we wouldn't take them along.

Q. Well, where was Mr. Kicklighter sent? A. He was sent to Fort Hoyle.

Q. In what year was that? A. That was in '29.

Q. In '29? A. Yes.

Q. Do you know whether Mr. Kicklighter was away without leave. A. I do not.

363½ Mr. Smith: That is improper cross examination.

By Mr. Bowen:

Q. Do you know what work Mr. Kicklighter was assigned to over at Fort Hoyle? A. No Sir.

Q. Do you know whether it was cooking or not? A. I do not.

Q. When you say he did cooking work what do you mean, was he in charge. A. Oh, yes, he was in charge of his shift. How we had two first cooks, you see, well one of them would go on today and the other one would relieve him on the next day. Sometimes they had four cooks but we had a small outfit so we could give a rating for only two cooks.

Q. Did he have a rating as a cook? A. Yes sir. When he first came to the kitchen I seen that he got fifth class rating.

Q. Fifth class rating? A. But about two months afterwards, something like that why he was given a fourth class.

Q. Fourth class? A. Yes.

Q. Was that the rating he had when he left? A. 364 No, he had second class when he left.

Q. Second class? A. Yes.

Q. When was it you first saw Mr. Kicklighter after your seeing him in the army, about how long ago was that? A. Let me see, that was in '37.

Q. 1937? A. Yes.

Q. Did he tell you anything about having had an accident? A. No.

Q. He didn't? A. No, he didn't say anything about that.

Q. When did you know that he had had an accident? A. Well, it was within the last three months.

Mr. Bowen: That's all.

Mr. Smith: I want to ask you just one more question.

By Mr. Smith:

Q. You say Kicklighter started with a fifth-class rating, then fourth-class rating and then second class-rating? A. That's right.

Q. What would that indicate? A. That's more money for him and it shows that he knows his job, you see.

Q. And it is a higher rating? A. Oh, Yes.

365 Q. Second-class would much higher than fifth-class? A. Oh, yes.

Q. Do you think Kicklighter now can go back and do that work? A. No, sir.

Mr. Smith: That's all.

Mrs. Audrey Kicklighter, 724 8th Street, Northwest, Washington, D. C., called as a witness on behalf of the claimant, being first duly sworn, testified as follows:

Direct Examination

By Mr. Smith:

Q. Mrs. Kicklighter, you are the wife of the claimant, Raymond W. Kicklighter? A. Yes, sir.

Q. When did you first meet your husband? A. In the fall of 1932.

Q. And you were subsequently married to him? A. Yes, sir.

Q. When was that? A. February 17th, 1933.

Q. Prior to his marriage to you, did you see him frequently? A. Yes, sir.

Q. Prior to your marriage? A. Yes.

Q. And do you know of any difficulty that he had?

366 Mr. Bowen: What do you mean "difficulty"?

Mr. Smith: Well, all right, I will withdraw that question.

Mr. Bowen: If it has anything to do with the case it is quite all right.

Mr. Smith: I think that we might as well clear up that point as long as it was brought up.

By Mr. Smith:

Q. Was Mr. Kicklighter arrested before you were married? A. Yes, sir.

Q. That was with reference to a stolen watch? A. Yes, sir.

Q. Explain what you know about that. A. Well, my understanding was that he was given a watch in payment of some money and that he ran short of funds and he borrowed some money on it, and when he took the tickets back why they arrested him because the watch had been stolen and

they indicted him for grand larceny and they wouldn't let him have a lawyer until he went before the grand jury, and the case was dismissed for lack of evidence. It wasn't proven where he got the watch from.

Q. Do you know whether or not it was shown at the time the alleged crime was committed that Mr. Kicklighter was out of the city? A. Yes, sir.

367 Q. And there was no conviction of that? A. No, sir.

Q. Now, do you recall the time when Mr. Kicklighter started to work for the Potomac Electric Power Company? A. Yes, sir.

Q. When was that? A. In July 1933.

Q. From the time you were married until the time he went there, where did he work? A. Arcade Lunchroom.

Q. Now, do you know anything about the kind of work he did when he started there? A. He did general laborer's work, pick and shovel.

Q. And how long did he work there? A. I think he worked there until he resigned.

Q. Do you recall when that was? A. In February 1934.

Q. You say your husband resigned? A. Yes, sir.

Q. Do you know why? A. Well, at the time I was taken sick and my doctor advised me to take a rest, and we went down to Jacksonville on a vacation.

Q. All right. Prior to that time had you, yourself, 368 been employed? A. Yes, sir.

Q. Where? A. At the Old Folks' Home.

Q. Located in Washington? A. Congress Heights, that's in the District.

Q. Now, how long were you in Jacksonville, Florida? A. About six weeks.

Q. And you returned to Washington? A. Yes, sir.

Q. Did Mr. Kicklighter return to work for the Potomac Electric Power Company? A. Yes, sir.

Q. Do you recall the date? A. It was in May, 1934.

Q. You don't know the day of the month? A. No, sir.

Q. And what kind of work did he do then, if you know? A. Well, he was doing laborer's work and laying pipes.

Q. Did he during this time seem to enjoy his work? A. Yes, sir; very much. He even used to borrow books from the library and study and he also borrowed books from my father.

Q. What does your father do? A. He is an electrician and a general mechanic at the Old Folks' Home.

369 Q. And did there come a time when he again resigned? A. Yes, sir.

Q. When was that? A. In November, 1934.

Q. And why did he resign at that time? A. He learned of his sister's death, and he wanted to make a trip to her funeral.

Q. He didn't take leave then? A. No, sir.

Q. How long was he away at that time? A. About a month.

Q. And then he returned to the Potomac Electric Power Company? A. Yes, sir.

Q. Do you recall the date? A. The 2nd of January, 1935.

Q. Do you know anything of the nature of the work he was doing then? A. He was working on a compressor.

Q. Did he ever talk to you about his work when he would come home? A. Yes, sir.

Q. What did he say? A. He would say how he was getting along, how he was progressing and how he enjoyed his work. He was very enthusiastic about it.

370 Q. Did you have any children born at that time? When was your first child born? A. In July, 1934.

Q. And was he very affectionate towards you and the child? A. Very affectionate.

Q. Now, directing your attention to May 24th, 1938, the day that he was injured,—

Mr. Bowen: Is that the date?

Mr. Smith: Excuse me, 1935.

By Mr. Smith:

Q. What was the first that you knew about it? A. Well, a fellow from the company notified me about 7.00 o'clock in the evening that he was in the hospital.

Q. And what did you do? A. I went to the hospital to see him.

Q. You saw him there at the hospital? A. Yes, sir.

Q. And did you talk to any of the nurses or doctors? A. Yes, sir.

Q. How long did you visit with your husband there? A. Oh, approximately an hour.

Q. And during that time just tell in your own way what you observed, how was he towards you? A. I observed that he had an ice cap on his head and he was curled up on the side and he was very restless and irritable. He gave short answers and he said he may even go back to work that night. He was supposed to be working that night and he wanted to get out of bed. I had to call the nurse and doctor several times while I was there.

Q. What doctor was there? A. Dr. Morhart.

Q. Did you get Dr. Morhart? A. No, sir.

Q. Well now, did the nurse tell you anything about him?

A. She said he had been very restless.

Mr. Bowen: I object to what the nurse said.

Mr. Smith: All right, I will drop that.

By Mr. Smith:

Q. Did you see him the following day? A. Yes, sir.

Q. Tell about what you observed the next day. A. Well, I went back in the afternoon and he had gotten out of bed and they had to give him clothes and then he walked up and down the hall. He was very restless and didn't want to talk to anybody at all. All he wanted to do was to get out. I had the nurse call the doctor several times that afternoon because he wanted to go home and the nurse called

Dr. Morhart's office and home and he didn't answer. He tried to get me to have him signed out, but I wouldn't sign him out because I didn't think it advisable. Then I brought the little girl in the hallway and when he saw her he said he would go in and rest a while until we came back that evening.

Q. Did you come back that evening? A. Yes, sir.

Q. And how was he that evening? A. He was pretty well tired out and exhausted from during the day, all the walking around and everything and he seemed to be kind of more quiet.

Q. How long did you visit with him that evening? A. About an hour.

Q. During these three visits did he complain to you of any of his injuries or anything? A. Oh, he said his head hurt him.

Q. Now, was that the last time you visited him at the hospital? A. Yes, sir.

Q. That was Saturday evening? A. Yes, sir.

Q. Did he go home Saturday evening? A. No, sir.

Q. When did he go home? A. He came home about 2.00 o'clock Sunday afternoon.

373 Q. And what did he do when he got home? A. He went and lied down while I fixed some dinner.

Q. Now, how long was he home before he went to work? A. He was home about a week.

Q. Referring to the first few days, how did he act? A. Well, he reclined on the couch most of the day and would go to bed early at night.

Q. Did he complain of anything at that time? A. He just said that he could hardly hold his head up because it hurt him so much.

Q. He lay down because of the pain in his head? A. Yes, sir.

Q. Did he during that time see the company doctor, Dr. Morhart? A. He went to him about Wednesday to have his head redressed.

Q. And then did he return, did he return to work? A. Yes, sir.

Q. Do you recall the day he returned to work? A. It was on the 1st of June, 1935.

Q. Around the 1st of June? A. Yes, sir.

Q. How did he appear the first day he worked when he came home, how did he appear to you? A. Oh, he was rather quiet and very tired. He went right to bed and didn't eat his lunch.

Q. And the following day? A. Well, he was about
374 the same.

Q. Then, do you know how long he worked continuously or did he work continuously then? A. He worked continuously until about September.

Q. Do you know the date in September? A. The 13th.

Q. During this time did he complain of anything to you? A. Well, I noticed he had a headache quite a little and he had grown careless about his person, about his clothes, and he didn't seem to carry on conversation like he had; he didn't seem to have any interest.

Q. Do you know the reason he resigned September 13th? A. He had trouble keeping on working and he said he just couldn't hold out any longer.

Q. Well, did he discuss that with you, that is the possibility of his resigning? A. Yes; he said he fell down on a machine one day and he didn't seem to be quite the same after that.

Q. What did he do when he resigned there? A. He stayed off for a while and then they put him to work as a linesman on the W.P.A.

Q. And how did he get along with that? A. Not very good. When he came home he was very tired, irritable.

Q. Can you tell us about how long he worked
375 at that? A. He worked until February, 1936.

Q. And what happened in February 1936? A. Well, he had dizzy spells while working and he quit and he took us in a car and went to Florida.

Q. Well, tell us in detail what took place at that time. A. We went down there, he tried to get work but he didn't feel like working and stayed with his sister for a while and he had this terrible spell. He complained of his head. He said that he felt that there was something in the front of his head from here (Indicating) going back and at night it would come up here on top, (Indicating) and he would pound it with his hand to make it stop.

Q. Did you ever see him pound with his hand? A. Oh yes, several times, especially at night. He would stick his head against the wall and pound it and try to relieve the pain. He woke me up several times and told me, "I'm afraid I'm going to die." He would go out and sit on the front porch, just sit out there and wait for the spells to wear off, and then he would come in and go into a deep sleep, and it would be hard to arouse him until 12.00 o'clock.

Q. Now, prior to this time, during this time, were these spells of headaches constant? A. No, sir; just at times.

Q. There were times when he appeared to feel all
376 right and didn't complain? A. Yes, sir.

Q. Now, how did you get back from Florida? A. He got enough there from his sister and he came back to Savannah. Then I wired my father for some money from home.

Q. Now, what happened when you got back to Washington? A. We went down to the W.P.A. office and they reinstated him on his linesman's job.

Q. Doing the same work? A. Yes, sir.

Q. How did he get along this time? A. He didn't get along any better than he did the first time.

Q. Do you know about how long he worked that time?
A. Only a short time up until May.

Mr. Bowen: What year?

Mrs. Kicklighter: 1936.

By Mr. Smith:

Q. And did he ever complain or tell you anything about his work, or anything like that at that time? A. He said he could hardly do anything at times. He was afraid to climb up poles and I noticed several times that he came home with marks on his hands where he had slid
377 down poles. He got weak and couldn't stay up.

Q. Now did there come a time when he ever went back to work for the Potomac Electric Power Company?
A. Yes, sir; it was in May.

Q. In May. That was during the time he was working as a linesman? A. Yes, sir.

Q. And he quit that job as a linesman to go to work for—
Mr. Bowen: In what year was that?

By Mr. Smith:

Q. Give us the exact date, if you remember? A. 1936.

Q. Do you know what day of the month? A. No.

Q. And do you know any of the circumstances of his being re-instated as an employee for the Potomac Electric Power Company? A. I know he went up one day to see Mr. Donohue and he said that Mr. Donohue had asked him to sign a paper releasing them from the responsibility of the accident.

Q. What accident are you referring to? A. May, 1935, and first he came home and talked to me about it and I told him not to sign it. He worked a week or two more as a linesman and then he went back to see Mr. Donohue again and he put him to work without signing a paper.

378 Q. Do you know what kind of work he did this time. A. This time he did pick and shovel and he said a couple of times he wanted to get back on the machine.

Q. You mean he wanted to get back on the compressor machine? A. Yes, one day he came home and said they

put him on it and the colored boy had cut the cable and they took him back off.

Q. Well, what did he do then? A. Well, he then worked over the water at Benning.

Q. Did he have any difficulty, any trouble with his injury at that time? A. He seemed to have a constant headache at that time and he would take approximately a box of aspirin every two days. There were mornings I couldn't get him off to work and other times he had about six or eight glasses of water before he got to the car and he would hang around and miss it so he wouldn't have to go to work. At times I sent him to Dr. Morhart and he told him to stay off work two or three days and when he went back to work they sent him to the office and they gave him his discharge slip.

Q. Did you ever talk to anyone who worked with him at any time? A. I don't believe I did. A. I don't believe I did.

379 Q. Did he go back to Dr. Morhart after that? A. Yes, Dr. Morhart said he couldn't do anything for him.

Mr. Bowen: Wait a minute. Nothing about what Dr. Morhart said unless you heard Dr. Morhart say it.

By the Deputy Commissioner:

Q. Did the doctor say that to you? A. No, sir; I didn't go with him.

By Mr. Smith:

Q. You know whether or not he was sent to any other doctor? A. They sent him to Dr. Hammett.

Q. Just tell what you know about that. A. Well, the doctor examined his eyes and prescribed glasses for him and gave him the prescription, and he went up to Mr. Myers to have it filled and he refused to fill it, and so I sent him to the Community Chest and the Community Chest paid for the glasses.

Q. Did he wear the glasses? A. He tried to wear them for a few days but they didn't stop his headache or anything—

Mr. Bowen: Wait a minute. You may say he wore them but I don't want you to state an opinion as to why he couldn't wear them.

By the Deputy Commissioner:

380 Q. Did he tell you why he didn't wear them any further? A. They didn't stop his headache.

Q. Did he tell you that? A. Yes, sir; I asked him why he wouldn't wear them.

By Mr. Smith:

Q. And he said it didn't relieve his headaches? A. Yes.

Q. Then did he ever get a job doing anything else after that? A. He went to the W. P. A. and they sent him to Bolling Field.

Q. How long was it after he was discharged from the Potomac Electric Power Company before he got that job? A. Well, they sent him right out there about a week or two.

Q. About a week or two after? A. Yes, sir.

Q. And how did he get along with that one? A. Not very good.

Q. Now, at any time during this time do you know whether or not he tried to get back to the Potomac Electric Power Company to work? A. Yes, sir; on one occasion he was called down to the company and he went to see one of the men.

381 Q. Do you know his name? A. I believe it was Ferris.

Q. And how long did he work at Bolling Field? A. About two months.

Q. Did anything unusual happen while he was working there? A. Well, there was a time when my baby was born when he complained of headaches all the time and he finally came home and the baby was two weeks old then. He came home from work, put our clothes in a little truck, a pick-up truck and started out and took us down to Savannah.

Q. Describe the trip down there. Just tell the Commissioner all about that. A. Well, there were no sides in the truck and there was no top on it. We had to sit just on a seat and I was holding a little baby in my arms and I would have to watch him drive. He would drive off the road and I wouldn't let him drive all the way and we had to stop for the nights. It took us about five days to make the trip and we got down to Savannah and our money ran out. He tried to get work down there and he did work for a couple

of weeks. He got a job in a bag factory, printing bags, and he came home one day and was just as white as a sheet of paper and the perspiration was just pouring off him and he was holding his head and it was on a payday night, the afternoon he came home, and I made him lay down for a while. Then he went back after his money and he was gone about an hour and a half and he didn't know where he had been or what he was doing. So I put him to bed
 382 and got a girl to watch the children and I went down to the factory to see the boss and he told me he had been holding his head all morning and he said he didn't give a damn about the job and walked out and the boss tried to make him sit down and rest himself a while. He thought he was just tired. Afterwards I went outside to find him and he was gone. The next day I sent him back, but he never went back to work. He would go out a while and then come back.

Q. How old was your baby at that time? A. About three weeks old when we got down there.

Q. Three weeks old when you got there? A. It took about five days to get down.

Q. What kind of weather was it? A. Well, on our way down we ran into rain and a fellow where he stopped to eat had a great big sign and tacked it on top of the truck so we wouldn't get wet and he put a paste board sign on the car to keep out the rain. It was rather cold.

Q. Can you give us the date? Can you tell us what month it was? A. Well, it was along the middle of November.

Q. 1936? A. Yes.

Q. Now, how long were you down there? A. Oh,
 383 we were there until about, I would say, the 1st of February.

Q. The 1st of February, 1937? A. Yes, sir.

Q. And how did you get back to Washington? A. I went down to the Salvation Army Major and he gave me money to come home.

Q. Then you came back with the help of the Salvation Army? A. Yes.

Q. What did you do when you got back to Washington? A. Well, we went down to see the relief worker and she gave us rent money to get us a room and our groceries, and then sent him to Emergency Hospital.

Q. Have you been on relief since then? A. Yes, sir.

Q. You are on relief now? A. Yes, sir.

Q. When you came back to Washington, did Mr. Kicklighter try to get work? A. Yes, sir; he did.

Q. Can you tell us anything about his efforts to get work?
A. Well, he had Dr. Cohen write a letter to the Self-Help Bureau and I don't know, he never did go up there. Then he had a job with Hank's, a printing place. He came
384 in one day very enthusiastic about going to work but he got up the next morning to go to work and he went off and was gone for about an hour and a half or so, came back, and didn't remember where he had gone or what he went out for.

Q. Do you know of any other work that he tried to get or did? A. Well, general work. A woman came to the house and asked him to drive a car for her.

Q. When was that? A. January 1938.

Q. That's this year? A. Yes, sir.

Q. Tell what you know about that. A. Well, I happened to be standing at the front door, it was about 12:00 o'clock, and I noticed Mr. Kicklighter coming down the street and there was a woman walking approximately three feet behind him and she followed him to the house. I went on up to the apartment and she stood in the hallway and talked to him about ten or fifteen minutes and he came up-stairs and brought her along with him and told me that she wanted him to drive a car for her and I told the woman that he was under the doctor's care and that he didn't have any permit and she encouraged him to go to work and she would see that he got his permit. She said she would go down the
next morning with him to get it. So he met her near
385 there the next morning and I don't know, I don't guess he got the permit.

Mr. Bowen: Were you there, did you go down there with him?

Mrs. Kicklighter: No, sir.

Mr. Bowen: Well then, I object to that.

The Deputy Commissioner: Well, that's the evidence and it may be admitted, of course, it won't be considered unless it is corroborated.

Mr. Smith: I think a great deal of this evidence has already been corroborated by other evidence already in the record.

The Deputy Commissioner: I see, this is corroborative evidence of some prior testimony.

Mr. Smith: That's correct.

The Deputy Commissioner: Just continue.

Mrs. Kicklighter: Well, he went out the next morning and he didn't come back until about 1.00 o'clock. Then she met him the next morning about 10.30 and then he went out again.

By Mr. Smith:

Q. Where did she meet him that morning? A. She met him at the house. She drove the car to the house and then they drove off. Then she came back in the afternoon and they went off again for approximately two hours
386 and then came back. That was on a Friday night and he was all in, very irritable, and just seemed to go all to pieces. He didn't sleep and walked around the floor pretty near all night. I tried to keep him from going out Saturday morning but he said she was going to pay him, but we needed a little extra money so he went out and I told him to be careful. He took a few aspirins when he went out and said he would be back about one o'clock the latest and he came home about 5.30. So I got kind of worried and I called Mr. Smith and told him what he was doing and that I was afraid maybe he had an accident or something and so Mr. Smith came right over and said that he broadcast a look-out alarm for him to see if any accident had happened to him. Then they found him down at No. 1 Precinct.

Q. Did you subsequently attend Court to testify? A. Yes, sir.

Q. Do you know what he was charged with? A. Driving without a permit.

Q. Do you know what the Court did in that case? A. They charged him with driving without a permit.

Q. Do you know whether or not he received a letter from the Director of Traffic? A. Yes, sir.

Q. What was the content of that letter? A. They took his permit away from him; he can't get his permit.

387 Q. Now, I want to go back during the time since he was injured. Can you think of any other thing that would be important for us to know, of your own knowledge, that he has done that is unusual?

The Deputy Commissioner: When is this, prior to the injury?

Mr. Smith: Prior to this time and since the injury.

Mrs. Kicklighter: Well, I don't know. He is not able to work and he doesn't care much about his personal appearance. I have to keep at him to change his clothes and shave and to comb his hair and things like that whereas before he was hurt why he was very particular about his clothes. I wouldn't have to tell him to shave and he was in general a very well-liked man, since he has been hurt why he doesn't want any friends, he doesn't seem to care about having anybody at all around.

By Mr. Smith:

Q. Did he ever dispose of any personal effects, of furniture? A. After he was hurt we gave up our home. He sold part of our furniture and gave part of it away and the rest of it went back to the company we bought it from.

Q. Do you know any of the parties he sold any of the furniture to? A. There was a fellow—

388 Q. During this time, coming back to the time that he was arrested, pending the trial did he go to Baltimore? A. Yes.

Q. You tell what you know about that. Did you go to Baltimore with him the first day? A. Yes, sir.

Q. Tell what you know about that. A. I went over with him to the hospital. I talked to a couple of the doctors over there and I saw him, I guess, three times while I was over there.

Q. And how was he when he returned from the hospital? A. Well, he was very bad off when I got him home; he wasn't able to sleep.

Q. He was sick? A. He was very sick.

Q. Did he finally recover from that illness? A. Yes, sir.

Q. And how was he after that? A. He seemed to be a little better; he seemed to be a little more alert and seemed to be more sociable.

Q. You think that helped? A. I think that helped to a certain extent.

Q. Do you know what they did to him there?

Mr. Bowen: No, no.

Mr. Smith: Excuse me.

389 Mrs. Kicklighter: Well, the doctor told me—

Mr. Bowen: Well, that is what we are objecting to.

By Mr. Smith:

Q. Do you think that he is able to work now? A. Oh, he might do a little something; I don't think very much.

Q. Is there anything that happened recently that could be material to the facts, that the Commissioner should know? A. About three weeks ago the kitchen door came off the hinges. He took a pair of pliers to drive the nails back in. The pliers slipped from his hands and hit him across the eye and knocked him clear out. He was unconscious about three minutes from just that slight hit on his head.

Q. Did he fix the door all right? A. Well, The door won't shut now. He nailed the hinges on so the door has to stay open all the time.

Mr. Smith: You may inquire, Mr. Bowen.

Cross Examination

By Mr. Bowen:

Q. Mrs. Kicklighter, what was your maiden name? A. Varnes.

Q. Where were you born? A. Otisco Lake, New York.

Mr. Smith: Is this for the purpose of impeaching
390 the credibility of the witness?

Mr. Bowen: I haven't yet asked her anything that we shouldn't know about, Mr. Commissioner.

Mr. Smith: It is not material to the issue in the case.

Mr. Bowen: I think it is very material. I think I have the right, Mr. Commissioner, to see where she stated she lived before and at the time of the marriage.

Mr. Bowen: Do you know where you stated you lived at the time you got the marriage license?

Mrs. Kicklighter: Yes, sir.

Mr. Smith: Did you state that?

Mrs. Kicklighter: No, I don't believe I did.

By Mr. Bowen:

Q. Well, I will show you this paper and ask you if that is a certified copy of the marriage license issued to you at that time. (The paper was handed to the witness) A. Those are the questions I answered.

Mr. Smith: I don't think that has any bearing to do with this case at all, Mr. Commissioner.

By Mr. Bowen:

Q. Do you know where your husband was born? A. In Blackshear, Georgia.

Q. Now, in this statement that you said was made at the time, your husband's birthplace is given as Los Angeles,

California. A. Well, that's only hearsay that I say
391 he was born in Georgia. I don't know for sure.

Q. Do you know what reason there was for giving his birthplace as Los Angeles, California? A. He may have been born there for all I know.

Q. Do you know where he was born? A. No, I don't know for sure.

Q. Well, was he born in Los Angeles, California or Georgia? A. I don't know.

Q. You said you were born in Blue Plains? A. No, sir. I said I was born in Otisco Lake, New York.

Q. Do you know whether your husband was married previously to your marriage with him? A. I understand he was.

Q. Did he ever tell you anything about it? A. Yes, sir.

Mr. Smith: Mr. Commissioner, before Mr. Bowen continues, I want the record to show an objection that there is nothing in the direct testimony of this nature. It is improper cross examination.

Mr. Bowen: I am just cross examining the witness.

The Deputy Commissioner: Well, it doesn't make any difference as long as this is important to the issue in the case. I don't know what his line of questioning is.

392 By Mr. Bowen:

Q. Did your husband ever tell you when at Fort Hoyle, Maryland, he met a woman, married her that same night? A. He told me about it.

Q. He did? A. Yes, sir.

Q. Did your husband tell you about his deserting from the army? A. Yes, sir.

Q. Did your husband tell you about how he fooled the army doctors at that time by claiming he had a temperature when he didn't have any? A. Well, I don't remember his going into details about it, but he has talked to me about being in the hospital.

Q. Did he tell you how he raised his temperatures at times by putting soap under his armpits to fool the doctor?

Mr. Smith: If Your Honor pleases, there is absolutely no previous evidence of any of this; it is highly improper.

The Deputy Commissioner: Your objection is noted. You may answer if you know.

Mrs. Kicklighter: Well, I don't know.

By Mr. Bowen:

Q. Did he ever speak to you with reference to what happened while he was in the army, in reference to his repeated applications of being put on the sick list?

393 Mr. Smith: Now, Mr. Commissioner, I want to make a very strenuous objection to this, absolutely. They have had an opportunity to have the war records shown here. They are all in the record. His treatment and all, there is nothing whatsoever as to anything of the nature that Mr. Bowen is trying to get in evidence by his own questioning. I think it is very improper. I think it is unfair to the case.

Mr. Bowen: I think before this case is through there may be rather positive evidence.

Mr. Smith: Well then, get it in the right way.

Mr. Bowen: I am asking, Mr. Commissioner, what he told her about.

The Deputy Commissioner: I overrule the objection. You may answer.

Mrs. Kicklighter: I don't know.

By Mr. Bowen:

Q. Did he tell you about when he was assigned to do some work in the army he couldn't do it, claimed he was too sick to do it? A. Well, before he didn't let me tell what my husband told me and now he wants to know what my husband told me.

The Deputy Commissioner: Don't ask questions, answer them.

Mr. Smith: If you don't know, say so.

394 Mrs. Kicklighter: I don't know anything about when he was in the army. He told me in a general way what happened during his army time, but he didn't go into detail about the things that happened.

By Mr. Bowen:

Q. Did Mr. Kicklighter ever tell you that he had a former wife living in Martinsburg, West Virginia? A. Yes, sir.

Q. Did he have one living on Fayette Street in Baltimore? Did he have a former wife on Fayette Street, Baltimore? A. Well, that just doesn't mean a thing to me.

Q. Well, did he ever discuss his former marriages with you? A. Yes, he discussed one.

Q. Which one did he discuss? A. With a girl that lived in Martinsburg, West Virginia.

Q. He didn't discuss the marriage with the woman who lived in Fayette Street, Baltimore? A. I don't know as to whether he has ever had one there.

Q. You don't know whether your husband was married once or twice before you were married to him?

Mr. Smith: She has answered the question.

Mrs. Kicklighter: Only once, to my knowledge.

By Mr. Bowen:

Q. You knew, you say, that he was married once before?

A. Yes.

395 Q. Do you know whether he was divorced from that woman? A. He had an annulment.

Q. An annulment? A. Yes, sir.

Q. Do you know in what court, in what place it was that it was annulled? A. It was in West Virginia.

Q. Did he tell you the grounds for the annulment? A. Well, she had already been married to another fellow when he married her.

Q. Did he tell you how long he knew her before he married her? A. Oh, a couple of weeks.

Q. Is your husband a good cook? A. He was when he first married.

Q. He was? A. But he has since lost all interest in it.

Q. Did he ever cook any meals for you? A. Lots of times.

Mr. Bowen: That's all.

The Deputy Commissioner: That is all.

Mr. Smith: That is our case, Mr. Commissioner.

Harry A. Pearce, 67th and Peach Avenue, Seat Pleasant, Maryland, called as a witness on behalf of the employer, being first duly sworn, testified as follows:

396 Direct Examination

By Mr. Bowen:

Q. Where do you work, Mr. Pearce? A. Potomac Electric Power Company, Conduit Division.

Q. And how long have you been working there? A. About seven years.

Q. Do you know Mr. Raymond Kicklighter, that gentleman over there? A. Yes, sir.

Q. How long have you known him? A. Well, I am not exactly sure, but it has been around five years, I imagine.

Q. Did you know him before he had an accident? When he was with the company in May of '35? A. Yes, sir.

Q. In what way did you know Mr. Kicklighter, under what circumstances? A. Well, we worked together on compressors.

Q. And did you have a chance to observe Mr. Kicklighter while at work on those compressors? A. Well, I found him to be all right. He was a very good worker and all.

Q. Did you observe him as to how he compared with other workmen performing similar work? A. No, I didn't see any difference. Just that time. I don't know, he
397 would just sometimes speak to me, you know, when he saw me and again sometimes just go on by, you know.

Q. Did he look any different there than he did when he worked for the company? A. Well, I don't see any difference, no difference.

Q. Did you ever see Mr. Kicklighter after the accident? A. Yes, sir.

Q. On May 24th, 1935? A. Yes, sir.

Q. Did you notice any difference in his manner after the accident than before? A. No, sir.

Q. Had he changed in any way? A. I haven't noticed any change.

Q. Had you seen him at work after the accident? A. Yes, sir.

Q. Was he able to perform the work apparently just the same as he had performed it prior to the accident? A. I hadn't noticed any difference; he was working the same.

Q. Had you seen him along the street after the accident? A. Yes, sir.

Q. Noticed any difference in his walk, his general appearance? A. No, sir.

398 Q. Do you see any difference in him today? A. No, sir.

Mr. Bowen: That's all.

Mr. Smith: No questions.

The Deputy Commissioner: That is all.

Mr. Joseph White, 1921 9th Street, N. W., Washington, D. C., called as a witness on behalf of the employer, being first duly sworn, testified as follows:

Direct Examination

By Mr. Bowen:

Q. Whom do you work for? A. I work for Frank Joy, 1112 9th Street, Northwest.

Q. Do you know Mr. Kicklighter? A. Yes, sir.

Q. When did you first become acquainted with him? A. I was working along with Pepco when he was on the compressor.

Q. Did Pepco ever hire any trucks from Mr. Joy? A. Yes, sir.

Q. Were you working for Mr. Joy at that time? A. Yes, sir.

Q. On a Pepco job? A. Yes, sir.

Q. Do you know of Mr. Kicklighter having had an accident? A. Yes, sir.

399 Q. On or about May 24th, 1935? A. Yes, sir.

Q. How did you know of his having had an accident and under what circumstances do you know of it? A. Well, I carried him to the hospital. I carried him to the hospital and that evening when I come in I had to go to the Traffic Bureau because they got after me for going down on Connecticut Avenue for passing a red light.

Q. When you took him to the hospital, what was Mr. Kicklighter's condition? A. I was standing by the side of the truck when the air hose slipped and hit him. I got my

truck and carried him to the hospital. I got out and went into the hospital.

Q. Was he at any time unconscious? A. No, sir.

Q. And he got up on the truck of his own accord without anybody helping him? A. Yes, sir.

Q. Did he get off the truck himself without anybody helping him? A. Yes, sir.

Q. Did he walk into the hospital? A. Yes, sir.

Q. And at no time did you see him unconscious? A. No, sir; not with me he wasn't.

400 Mr. Bowen: That's all.

Cross Examination

By Mr. Smith:

Q. You are Joseph White? A. Yes.

Q. Now, I understand you to say that you took him to the hospital and then had to go to Traffic Court the next night?

A. Yes, sir; I came down Connecticut Avenue and passed a light at M Street and the Police Officer got the number of the truck and called up Mr. Joy and told him to send me down, send the driver of that truck down to court, and I had to go there. I told him that a man in there was sick and they called back and said they didn't find anybody at the hospital and I had to go to Pepco to get a report on Mr. Kicklighter and they gave me a letter to take to Traffic Court.

Q. Well, did you go through a red light? A. Yes, sir.

Q. You are not in the habit of doing that? A. No, sir.

Q. Why did you do that? A. Because the man was in the truck. He was sick and I was carrying him to the hospital.

Q. Pretty seriously hurt, wasn't he? A. I don't know how seriously he was hurt. He was sitting in the truck holding his head with a rag over it.

401 Q. Did you talk to him? A. Yes.

Q. What did he say? A. I asked him how he was and he told me to hurry up and so I took him right to the hospital.

Q. Well, did they release you on the charge? A. They released me after I brought the letter from the office.

Q. Were you subpoenaed here today? A. Yes, sir; I was called to make a report.

Q. Did you get a subpoena? A. No, sir.

Q. Have you ever seen an unconscious person? A. Sure, I seen some.

Q. How does a person have to be when he is unconscious? A. Laying down and don't say nothing, foam at the mouth, and something like that.

Q. How many people have you seen unconscious? A. Well, I have seen one fellow who fell down on account of the heat. He was unconscious and they picked him up and put him in a truck. They had to carry him in. I have seen one man over on New York Avenue and Benson Road when he got killed.

Q. Did you ever see a man walking when he was unconscious? A. No, sir.

402 Q. Never did that? A. No, sir.

Q. Now, you were standing right there and actually saw this, didn't you? A. Yes, sir.

Q. I wish you would tell us every detail, just what you saw. We want to know about it. A. Well, I was standing right there at the side of my truck.

Q. How far were you away from him? A. I was a length from him, standing there waiting to get a load of dirt.

Q. Did you have your face towards him? A. No, sir; my face was towards my truck and when the hose slipped off and hit him it made a noise and I turned right round. By that time the blood had started to get out. He didn't get up, he just started up. He was bending down, turning the hose.

Q. What kind of a noise was that did you hear? A. Just air, p-s-s-t. A blow like that. Then I quickly turned around.

Q. Did you hear any noise as though a blow struck him? A. No, no; it was just an air compressor. You couldn't hear a blow from the air.

Q. Now, did you help pick him up? A. He didn't
403 fall down.

Q. Oh, he didn't even fall down? A. No, sir.

Q. I see. Stood right up all the time? A. He was leaning over there, like this, when the hose hit him. He got up like that and put a rag over his head. Some fellow said, "Take him to the hospital."

Q. Who said that? A. One of the workmen around there.

Q. Do you know the names of any of them? A. No, sir; I don't exactly know the names.

Q. Did Mr. Kicklighter say anything? A. I got in my truck and he told me to hurry up.

Q. He told you to hurry? A. Yes, sir.

Mr. Smith: No further questions.

Mr. Bowen: That is all.

Mr. Harry B. Daniel, Vance County, Henderson, North Carolina, called as a witness on behalf of the employer, being first duly sworn, testified as follows:

Direct Examination

By Mr. Bowen:

Q. What is your business, Mr. Daniel? A. Barber.

Q. You own the shop? A. Yes, sir.

404 Q. And where is that located? A. Henderson, North Carolina.

Q. Do you know Raymond Kicklighter? A. Yes, sir.

Q. Is that him? (Indicating) A. Yes, sir.

Q. When did you first become acquainted with him? A. It was on February 11th, 1925.

Q. 1925? A. Yes, sir.

Q. At what place? A. We met at Baltimore, Maryland. He was sent to Fort Hoyle, Maryland to an army post.

Q. Fort Hoyle? A. Yes, sir.

Q. And what company was he attached to? The same as you were? A. Yes, both of us were assigned to Battery A, 6th Field Artillery.

Q. Battery A, 6th Field Artillery? A. Yes, sir.

Q. And what was your particular assignment, what did you do? A. Well, I did straight duty there for about four, five, six months, then I got a polo attachment taking
405 care of polo ponies. Then I was transferred to headquarters, First Battalion, 6th Field Artillery and Kicklighter was shanghaied to Service Battery.

Q. Shanghaied to what? A. Service Battery, 6th Field Artillery.

Q. Why, if you know? A. Well, all I know was that they claimed he couldn't do duty in A Battery, 6th Field Artillery.

Q. What was the work required? A. That was a gun outfit and telephone, stuff like that. You had to be pretty smart.

Q. And he couldn't do the work? A. No.

Q. Were you a non-commissioned officer? A. Yes, sir.

Q. What grade? A. Corporal.

Q. How long did you stay with Mr. Kicklighter altogether? A. Well, about nine months in the same artillery. Then I was transferred to 1st Artillery Headquarters. He was transferred to the sixth.

Mr. Smith: May I interpose and ask a question? What is meant by "shanghaied"?

The Deputy Commissioner: What do you mean by that?

406 Mr. Daniel: When they couldn't use him in A Battery they sent him to Service Battery, 6th Artillery, that was an outfit that didn't take so much brains so they transferred him there.

Mr. Smith: If they haven't got much brains they shanghaied them?

Mr. Daniel: Yes.

By Mr. Bowen:

Q. And what was he shanghaied to, what kind of a job? A. Well, he drove four mules to a wagon.

Q. Do you know how he performed that job? A. Well, it was all manure and stuff like that from the stable. He had so many stables and had to drive the manure out every morning to the field where everybody unloads.

Q. Did you have occasion to observe the manner and condition of Mr. Kicklighter at the time he served with you in the army? A. It seemed like he was in a trance or something like that all the time. He looked like he wanted to be off by himself, didn't have much to say. I guess, I don't know, he just looked like he was kind of a sleepy fellow.

Q. When you talked to him would he look at you? A. No, sir.

Q. What would he do? A. Turn his head off and look somewhere else.

407 Q. Did you ever hear him complain of being sick?

A. He claimed he had a headache and dizzy spells.

Q. Do you know whether he made any attempt to get on the sick list from time to time and how often? A. Well, I was a non-commissioned officer and I would take a sick report one day a week and I saw Kicklighter on that sick report practically every time I had sick leave.

Q. And do you know of any time when he attempted to fool the army doctor by claiming to be sick when he wasn't?

A. Well, they said he used some kind of soap to make a temperature.

Mr. Smith: I object to that.

The Deputy Commissioner: Objection is noted.

Mr. Bowen: The Commissioner says you may state what it was.

Mr. Daniel: Just a piece of G. R. soap, rub it under his armpits and they claim it made a temperature. We had someone else in our outfit who did the same thing.

By Mr. Bowen:

Q. Did he ever complain of feeling tired or unable to go on with his work? A. Well, I wouldn't say that he said he was tired, he just looked like he couldn't get along or something. He didn't have much to say.

Q. Do you know whether or not he was married at 408 the time he stayed with you in the army? A. I can't tell you exactly when Kicklighter was married, but I think it was in the Winter, well, I would say the Fall of 1926, I believe it was.

Q. Had he been going with the girl very long, do you know? A. Well, he told me he met the girl that night and married her the next day.

Q. Could you see any great difference between how Mr. Kicklighter looked and how he looks now? A. He looks a little bit older, that's all.

Q. When was the last time you saw him prior to today? A. It has been about, let me see, I would say about the 4th of July, I imagine, two years ago.

Q. At what place did you see him? A. I saw him over, I forget the name of the street, Durrow was there and Skinner was there up in Watkin's apartment. We came up here to go to a ball game and also to see Durrow. He is dead now. He came in while we was over there.

Q. Did you notice any difference in the manner or the condition of Mr. Kicklighter at that time from what it had been when you saw him in the army? A. No, sir.

Mr. Bowen: That's all.

Cross Examination

By Mr. Smith:

Q. Mr. Daniel, how much money did the Potomac
409 Electric Power Company pay you to come up here
and testify? A. Not a dime.

Q. You came up here and paid your own transportation?
A. I most certainly did.

Q. Have you ever been arrested? A. No, sir.

Q. Never been arrested for anything in your life? A.
No.

Mr. Bowen: Have you anything to show your standing
in your community?

Mr. Daniel: Yes.

By Mr. Smith:

Q. Were you ever discharged from the army yourself?
A. Yes, sir.

Q. Did you ever try to get back? A. I was discharged
and when I was discharged from the army I had 30 days to
re-enlist as sergeant. I had a chance to go back as sergeant
inside of 30 days.

Q. Now, Mr. Daniel, you say that the last time you saw
him, Mr. Kicklighter, was back in 1926 and when he was in
the army? A. From '25 to '28.

Q. You have given us very minute details of all those
things? A. Yes, sir.

410 Q. And did Mr. Myers go over those things with
you? A. No, sir.

Mr. Smith: I just wanted to ask you that question.
That's all.

By Mr. Bowen:

Q. Since he is going into the question of your credibility,
have you anything to show what your standing in the com-
munity is? A. (No reply, but witness hands two papers to
Mr. Bowen)

Mr. Bowen: Mr. Commissioner, this is a statement is-
sued over the signature of Elvin O. Faulkner, Clerk of the
Superior Court, Vance County, Henderson, North Carolina.

By Mr. Bowen:

Q. Was this given to you by the clerk of that court? A.
Yes, sir.

Q. And under what circumstances? A. I told him that I was coming to Washington and he said, "Let me give you a letter to take along with you." So I got it.

Mr. Smith: By the way, Mr. Daniel, Kicklighter was never sick while he was in the army really?

Mr. Daniel: No, sir.

Mr. Smith: Never was very sick?

Mr. Daniel: No; he would get sick and stay in the hospital a day or two and come back.

411 Mr. Smith: Were you shanghaied every time he was shanghaied?

Mr. Daniel: No, sir.

The Deputy Commissioner: Just a minute.

Mr. Bowen: I offer this in evidence. (The letter from Elvin O. Faulkner is marked as the employer's Exhibit No. 1 as of this date and received in evidence.)

By Mr. Bowen:

Q. I ask you whether you have a letter from the Commissioner of Deeds? A. Yes, sir.

Q. And this is the letter? A. Yes, I cut Mr. Robinson's hair last Saturday morning, I shave him at my shop all the time, and I told him I was coming up here so he gave me that letter.

Mr. Bowen: Offered for the same purpose. (Received in evidence as Exhibit No. 2 for the employer as of this date)

By Mr. Bowen:

Q. Mr. Daniel, do you know anything about Mr. Kicklighter's deserting from the army? A. He was absent, I wouldn't say that he was absent for a while. He got to be absent, I forget now, I think it is 30 days and was called a desertion.

Q. Do you know where he went at those times at all? A.

Well, no sir; I don't. I would be afraid to say not
412 knowing exactly.

Mr. Bowen: That's all.

Thomas H. Donohue, 3301 North Hampton Street, Northwest, Washington, D. C., called as a witness on behalf of the employer, being first duly sworn, testified as follows:

Direct Examination

By Mr. Bowen:

Q. Mr. Donohue, what is your occupation? A. Superintendent of the Conduit Division, Potomac Electric Power Company.

Q. Do you know Mr. Raymond Kicklighter? A. Yes, sir.

Q. Is that him? (Indicating) A. Yes, sir.

Q. It was stated this morning by Mrs. Kicklighter that when Kicklighter went back to work in May '36 with the company or went back to get work with the company in May '36, you stated you would put him back to work if he'd sign a release to the company from the accident which he had in May '35. Is that true or not? A. It is not true. In May, I thought he was working along in there. The accident was supposed to have happened in May '35, is that right?

Q. Yes, that's right Q. And he worked until August '36, isn't that right?

The Deputy Commissioner: Don't ask questions, just state what you know.

Mr. Donohue: I think that's what it was. Anyway, there was no conversation like that brought up. There was no reason for it.

By Mr. Bowen:

Q. Did the company require that if any man had had an accident and goes back to work, that he sign any release for it? A. No, sir.

Q. And you are positive that you never asked Kicklighter to sign a release for the accident before you put him back to work? A. No, sir; there would be no reason for me to ask any such thing.

Mr. Bowen: That's all.

Cross Examination

By Mr. Smith:

Q. Did you ever loan Kicklighter any money, personally? A. No, I don't recall at the moment.

Mr. Smith: No further questions.

The Deputy Commissioner: That's all.

P. B. H. Stains, 634 North Carolina Avenue, Southeast, Washington, D. C., called as a witness on behalf of the employer, being first duly sworn, testified as follows:

414 Direct Examination

By Mr. Bowen:

Q. What do you do, Mr. Stains? A. Drive a truck.

Q. For whom? A. The Potomac Electric Power Company.

Q. Do you know Raymond Kicklighter? A. Yes, sir.

Q. When did you first become acquainted with him? A. About February, 1935.

Q. Did you ever go around with him? A. Yes, sir.

Q. Prior to the date of his accident? A. No, not afterwards.

Q. Afterwards? A. No, not afterwards.

Q. But before? A. Before? Yes, sir.

Q. How many times would you suppose you went out with him? A. Well, I wouldn't say how many times, quite a few times.

Q. Did you go to Hagerstown together? A. Yes, sir.

Q. Did Kicklighter tell you anything about the accident he had had? A. Yes, sir.

Q. What did he tell you? A. I think he said he
415 drove a cab up there, a Studebaker automobile, and he upset it and he had to leave Hagerstown.

Q. Did Mr. Kicklighter any time prior to the accident complain to you of being dizzy or having headaches? A. Well, not just that, he would be moody at times. Sometimes he would talk to you and other times he wouldn't say anything.

The Deputy Commissioner: This is before the accident?
Mr. Stains: Yes.

By Mr. Bowen:

Q. Did you ever observe him while at work on the digging machines? A. Yes, sir.

Q. Did you ever see him get off the digging machine and lie down? A. Yes, sir.

Q. That was before the accident? A. Before the accident, yes, sir.

Q. Did you see Mr. Kicklighter now? A. Yes, sir.

Q. Do you remember how he looked when you used to go out with him prior to the accident? A. Can you see any difference in the way Mr. Kicklighter now looks from the time you went out with him prior to the accident?

416 A. No, none at all.

Mr. Bowen: That's all.

Cross Examination

By Mr. Smith:

Q. You have seen Mr. Kicklighter two or three times recently, that is during the past three months? A. Yes.

Q. You saw him over at Police Court one time and you saw him over at the Ouray Building, where the first hearing on this case took place? A. Yes, sir.

Q. You have talked with him? A. Yes.

Q. Isn't it a fact you told Kicklighter that you hated to but you had to hold your job, you had to testify against him? A. No, I didn't say that. Not pertaining to the job or anything.

Q. You said that you had to go down and testify to keep your job? A. We were friends and all that but I didn't say anything about pertaining to the job.

Mr. Smith: That's all.

By Mr. Bowen:

Q. You told him you had to tell the truth, didn't you? A. Yes, sir; I swore to that.

Mr. Bowen: That's all.

(Mr. Bowen then offered to put on the stand Mr. Watkins, who, he said would testify along the same lines as Mr. Stains. The Commissioner and Mr. Smith agreed that this wouldnt' be necessary.)

The Deputy Commissioner: Have you gentlemen come to any agreement with respect to wages?

Mr. Bowen: Mr. Commissioner, he has the records of his employment of Mr. Kicklighter from July 18th, 1933 to August 7th, 1936 and I think the original has already been filed with you.

The Deputy Commissioner: I am afraid that won't help us. That won't give us the earnings of the claimant for the year preceding the injury.

Mr. Myers: But he only worked at times, two or three months at a time. He never did work steadily.

The Deputy Commissioner: We were discussing this at the first hearing and as I understood you gentlemen you were going to determine what the average weekly wage would be.

Mr. Bowen: We haven't had very much opportunity to do that.

The Deputy Commissioner: Well then suppose you try to do it sometime in the next week or so.

Mr. Bowen: We will attempt to do it, Mr. Com-
418 missioner.

Mr. Smith: You want it for one year preceding?

The Deputy Commissioner: If you can, if he did work substantially the whole of that year then we will take the exact earnings, the actual earnings for that year. If he didn't work substantially for the whole of that year then you probably could come to some agreement by considering his prior earnings.

Mr. Smith: That is preceding May 24th, 1935. Now, of course, I want to reiterate our stand in this, that we don't claim that he was disabled from working at that time, that is the record will show that our contention is that this injury became compensable later on. I just wanted to be sure that's in.

The Deputy Commissioner: I will review the entire evidence. (It was then agreed that Mr. Bowen would file a brief, a copy of which would be served upon Mr. Smith and Mr. Smith would be given 10 days from the date of the receipt of that brief to file a reply.)

This is to certify that I am the duly qualified and acting official reporter of the Deputy Commissioner, District of Columbia Workmen's Compensation Act, and as such officer, I reported the hearing in the matter aforesaid, which came on regularly before the said Deputy Commissioner on the 23rd day of August, 1938, that the foregoing Pages 317 to 402 inclusive, contain a full true, and correct transcript of Minutes of Hearing.

ALBERT STERN
Reporter.

419 *Exhibit No. 2 Employer*

Copy

H. M. Robinson Register of Deeds Vance County
Henderson, N. C.

August 20, 1938

TO WHOM IT MAY CONCERN:

This is to certify that I have known Mr. Henry B. Daniel for a long number of years. He bears in this community an excellent character and reputation, and is trustworthy of belief.

He is highly regarded by his neighbors, and all who know him.

Respectfully,

Signed,

H. M. ROBINSON,

*Register of Deeds of Vance
County*

420 *Exhibit No. 1 Employer*

Copy

MISS HELEN ROYSTER

Deputy Clerk Superior Court

HON R. HUNT PARKER

Resident Judge

Roanoke Rapids, N. C.

Office of

ELVIN O. FALKNER

Clerk Superior Court

Vance County

Henderson, N. C.

August 20, 1938

North Carolina

Vance County

To Whom it may concern:

This is to certify that the undersigned Clerk of Superior Court of the above State and County, residing at Hender-

son, desires to state that I have personally known Mr. Henry Daniel, who resides and operates a barber shop at North Henderson, for approximately 11 years, and have found him at all times to be an honest, honorable, and upright gentleman; having been closely associated with him during this period. And anything that he might say or do is not to be looked upon lightly. I have reference to any testimony he might give in any case in Court.

This is the 20th day of August, 1938.

(Signed,)

E. O. FALKNER

J. E. HAMLETT,

Sheriff Vance County.

421

Memorandum

November 17—1938.

Motion of Raymond W. Kicklighter to intervene as a defendant—granted.

Intervener's Motion to Dismiss

Filed November 17 1938

*

*

*

Now comes the intervener, Raymond W. Kicklighter, by his attorney, and moves the Court to dismiss the action because the complaint fails to state a claim upon which relief can be granted, and as reasons for this motion says as follows:

1. That the evidence adduced at the hearing before the defendant, Frank A. Cardillo, Deputy Commissioner, United States Employees' Compensation Commission for the District of Columbia District, fully supports the finding of said defendant, that said intervener's claim was presented within the time allowed by law.

2. That the findings of fact by the said defendant, Frank A. Cardillo are based upon substantial evidence as shown in the plaintiff's Exhibit "B".

S. PRESTON SMITH

Attorney for Intervener.

Received copy this 15th day of November, 1938.

R. E. LEE GOFF

Attorney for plaintiff.

422 *Motion to Dismiss Complaint for Injunction*

Filed November 30 1938

* * *

Now comes the defendant, Frank A. Cardillo, deputy Commissioner, United States Employees' Compensation Commission, by his attorneys, and moves this Honorable Court to dismiss the complaint filed herein for the following reasons:

1. That the complaint filed herein does not state a cause of action and does not entitle the plaintiff to any relief in law or equity.

2. That the complaint fails to state a claim against the defendant deputy commissioner upon which relief can be granted.

3. That the limitation in section 13 (a) of the compensation law relating to the filing of claim for compensation, relied upon by plaintiff, does not begin to run from the date of the accident, but begins to run from the time the employee has knowledge or becomes aware that he has sustained compensable injury; that it appears from the complaint, including the transcripts of the testimony made a part thereof, that the claimant, Raymond W. Kicklighter, did not know that the condition from which he is suffering resulted from the accident sustained by him on May 24, 1935, until March or May, 1937, when medical examination revealed that he had sustained a brain injury as the result of said accident; that condition of said employee was slowly progressive and disability resulting from said injury did not become compensable until about November 16, 1936; that his claim for compensation, filed August 18, 1937, was, as a matter of law, timely filed within one year from the date of injury, within the meaning of section 13 (a) of the compensation law; that the statute of limitations did not run against said claim, as alleged.

423 4. That it appears from the complaint, including the transcripts of the testimony made a part thereof, that the finding of fact of the deputy commissioner in the compensation order complained of, to the effect that Kicklighter is suffering temporary total disability as the result of the injury he sustained, as well as all other findings of

fact in said compensation order, are supported by competent evidence and should therefore be regarded by the court as final and conclusive.

5. That the compensation order complained of is in all respects in accordance with law.

6. For such other good and sufficient reasons as may be shown.

DAVID A PINE

United States Attorney.

WILLIAM S. TARVER

Assistant United States Attorney,

Attorneys for Defendant Frank A. Cardillo.

424

Stipulation

Filed December 2—1938

* * *

It is hereby agreed and stipulated by and between counsel for the parties herein, subject to the approval of the Court:

1. That this cause shall be advanced for hearing at such time as can be set by the Assignment Commissioner.

2. That pending decision by this Court the Plaintiff shall pay to the Claimant, beginning December 1, 1938, the sum of Twelve Dollars per week, as ordered by the Deputy Commissioner.

3. That the Plaintiff herein shall pay to S. Preston Smith, attorney for the Intervener, Kicklighter, the sum of Two hundred Dollars as an attorney's fee, as ordered by the Deputy Commissioner, said sum to be deducted from the net lump award of \$1107.43, provided the Court sustains the finding of the Deputy Commissioner. In the event, upon final adjudication, the Court should set aside the said award, S. Preston Smith, Attorney for the Intervener Kicklighter, shall refund the said \$200. to the plaintiff herein.

That pending final decision in this matter, the parties hereto agree not to attempt to enforce so much of said order as is not covered by this stipulation.

BOWEN AND KELLY

By S R BOWEN

R. E. LEE GOFF

Attorneys for Plaintiff,

WILLIAM S. TARVER

Assistant U. S. Attorney,

Attorney for Deputy Commissioner.

S. PRESTON SMITH

Attorney for Intervener.

425 *Findings of Fact, Conclusions of Law.*

Filed February 15 1939

This action came on to be heard upon the separate motions of the defendant Cardillo and the intervener, Raymond W. Kicklighter, to dismiss the complaint for injunction filed herein, and upon consideration thereof, the Court, this, the 15th day of February, 1939, makes and adopts the following:

Findings of Fact

That on May 24, 1935, Raymond W. Kicklighter was employed by the Potomac Electric Power Company as a compressor operator; that on said day while so employed an air hose came loose at the connection to a compressor machine and the metal end thereof struck the said Kicklighter on the right side of his forehead, as a result of which he suffered swelling, laceration of the forehead, and cerebral concussion; that said injury arose out of and in the course of the employment of said employee; that he was taken immediately to the Emergency Hospital where he was treated for concussion of the brain; that he remained in the

426 hospital two days and resumed his regular employment one week following the date of the accident, and continued at his regular employment until September of 1935, during which period he suffered occasional head-

aches and dizziness, without loss of time from work; that subsequently the attacks of headaches and dizziness became more severe, but said employee continued to work for certain periods until November 16, 1936, on which date he suffered a severe attack of headache and dizziness and collapsed on the job; that in May, 1937, his suffering from physical pain had become unbearable and he was referred by the Public Welfare Bureau to the Emergency Hospital where he received treatment for headaches, dizziness and nervousness; *that on August 18, 1937*, he filed with the defendant deputy commissioner a claim for compensation for disability resulting from said accident; that hearings on said claim were held before the deputy commissioner on May 24, July 28 and August 23, 1938, and the transcripts of the testimony taken at said hearings were made a part of the complaint for review by the court in this proceeding; that on October 14, 1938, the deputy commissioner filed a compensation order awarding compensation to said employee in which he found the facts relative to the injury sustained by said employee to be, in part, as follows:

“that in May or June, 1937, following examination by the attending psychiatrist, the claimant was informed that he was suffering from a brain condition caused by the injury sustained on May 24, 1935; that on August 18, 1937, he filed a claim for compensation; that he has been receiving medical treatment to date; that as the result of the injury sustained on May 24, 1935, the claimant suffered brain injury which caused deterioration of the brain substance; * * * that the only manifestations following the injury were occasional headaches and dizziness which were not sufficient to prevent his continuing at work for more than a year; that the condition resulting from the injury was progressive in nature and as time went on the symptoms grew gradually worse; that he was undergoing a definite change due to the injury sustained; that he became dull, care-
 427 less, worried, nervous, irritable, depressed and confused, and that at times he suffered lapses of memory and delusions of persecution; that all of the said symptoms resulted from the injury; that the claimant became aware of the nature and cause of his condition approximately in May of 1937, after the symptoms had become severe and unbearable, and after he had secured medical

treatment and advice; that the injury sustained on May 24, 1935, was slowly progressive and became compensable on or about November 16, 1936; that beginning the latter date he was incapacitated for performing his work; that the claim filed on August 18, 1937, was timely filed and within one year from the time that the injury became disabling and compensable and also within one year from the time he was aware of the nature and cause of his disability."

The court finds that the evidence taken in this case before the deputy commissioner contains testimony which supports the foregoing findings of fact of the deputy commissioner.

Conclusions of Law

WHEREUPON, the Court concludes as a matter of law:

1. That the findings of fact of the deputy commissioner in the compensation order filed October 14, 1938, complained of in the complaint, including the findings of fact to the effect that the claim for compensation was filed "within one year from the time the injury became disabling and compensable and also within one year from the time he (Kicklighter) was aware of the nature and cause of his disability", are as a matter of law supported by competent and substantial evidence, and said findings of fact are, therefore, final and conclusive and said compensation order is in accordance with law.

2. That the claim for compensation of Raymond W. Kicklighter was filed more than one year after the accident, but was filed within one year from the time the injury resulting from the accident became disabling and compensable, and also within one year from the date the employee had knowledge that his condition resulted from the accident; that said claim was, therefore, timely filed within one year after the injury, within the meaning of section

13 (a) of the Longshoremen's Act (33 U. S. C. A., 428 section 913 (a)), made applicable to the District of Columbia by the Act of May 17, 1928 (D. C. Code, Title 19, Chapt. 2).

DANIEL W. O'DONOGHUE
Justice

Final Decree

Filed February 15 1939

* * *

This cause came on for hearing upon the separate motions of the defendant, Cardillo, and the intervener, Raymond W. Kicklighter, to dismiss the complaint for injunction filed herein, the transcript of the testimony taken at the hearings before the Deputy Commissioner having been made a part of the complaint and included in the record before the court, and said cause having been duly argued by counsel for the respective parties, and the court now being fully advised in the premises, it is by the court this 15th day of February, 1939,

ORDERED, ADJUDGED AND DECREED,

That the application of the plaintiff for an injunction pendente lite be and the same is hereby dismissed; and it is further,

ORDERED, ADJUDGED AND DECREED,

That the motions of the defendant and the intervener to dismiss the complaint be and the same are hereby sustained, and that the said complaint be and the same is hereby dismissed.

DANIEL W. O'DONOGHUE

Justice

429

Notice of Appeal

Filed February 15 1939

* * *

Notice is hereby given this 15th day of FEBRUARY 1939, that Potomac Electric Power Company, a corporation Plaintiff hereby appeals to the United States Court of Appeals for the District of Columbia from the final judgment of this Court entered in this action on the 15th day of February, 1939, in favor of the Defendant, Frank A. Cardillo, Deputy Commissioner, U. S. Employees' Compensation Commission, etc. and Raymond W. Kicklighter, Intervener, against said Potomac Electric Power Company, a corporation Plaintiff.

BOWEN AND KELLY

R. E. LEE GOFF

Attorneys for Plaintiff.

Memorandum.

February 15-1939.

Deposit by plaintiff in lieu of bond on appeal—\$250.

Stipulation.

Filed March 3-1939

* * *

It is hereby stipulated and agreed by and between counsel for the plaintiff and defendant and intervener that the original "Exhibit B" annexed to the Complaint herein may be used as a part of the Transcript of Record on appeal, provided that a copy thereof, when printed, shall be filed and attached to the said Complaint.

BOWEN AND KELLY

By S. R. BOWEN—G.

R. E. LEE GOFF

Attorneys for Plaintiff.

430

WILLIAM S TARVER

*Asst. U. S. Attorney in and for
the Dist. of Columbia,*

Attorney for Defendant

S. PRESTON SMITH

Attorney for Intervener.

Assignments of Error.

Filed March 3-1939

* * *

Now comes the plaintiff, by its counsel, and assigns the following errors by the Court:

1. The Court erred in holding that the Findings of Fact and Award of the defendant Deputy Commissioner were supported by competent and sufficient evidence.

2. The Court erred in holding that the Findings of Fact and Award of the Defendant Deputy Commissioner were in accordance with law.

3. The Court erred in holding that the Findings of Fact and Award of the defendant Deputy Commissioner were final and conclusive.

4. The Court erred in holding that the claim filed by the intervener, Raymond W. Kicklighter, on August 18, 1937, for injuries arising out of an accident occurring on May 24, 1935 was filed within the time prescribed by law.

5. The Court erred in refusing to vacate and set aside the Award of the defendant Deputy Commissioner and to enjoin the enforcement thereof as prayed in the Complaint.

6. The Court erred in sustaining the motions of the defendant Deputy Commissioner and the intervener and in dismissing the Complaint.

7. The Court erred in other respects apparent of record.

BOWEN AND KELLY

By S. R. BOWEN G.

R. E. LEE GOFF

Attorneys for Plaintiff.

431

Designation of Record.

Filed March 3-1939

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*

The plaintiff having perfected an appeal herein to the United States Court of Appeals for the District of Columbia on February 15, 1939, hereby requests the Clerk of the District Court of the United States for the District of Columbia to prepare, at plaintiff's expense, a transcript of the record on appeal, including therein the following papers and proceedings, namely:

1. Caption.
2. Bill of Complaint, including Exhibits "A" and "B".
3. Motion of Defendant to Dismiss.
4. Motion of Intervener to Dismiss.
5. Stipulations (2).
6. Findings of Fact and Conclusions of Law signed February 15, 1939.
7. Order dismissing complaint.
8. Memorandum of notice of appeal and deposit for costs on appeal.

9. Assignment of Error.

10. This Designation of Record.

BOWEN AND KELLY

By S. R. BOWEN. G

R. E. LEE GOFF

Attorneys for Plaintiff.

432 District Court of the United States for the
District of Columbia

UNITED STATES OF AMERICA,
District of Columbia, ss:

I, Charles E. Stewart, Clerk of the District Court of the United States for the District of Columbia, hereby certify the foregoing pages numbered from 1 to 431, both inclusive, to be a true and correct transcript of the record, according to directions of counsel herein filed, copy of which is made part of this transcript, in cause No. 623, Civil Action, wherein Potomac Electric Power Company, a corporation, is Plaintiff and Frank A. Cardillo, Deputy Commissioner, United States Employees' Compensation Commission, District of Columbia Compensation District, et al., are Defendants, as the same remains upon the files and of record in said Court.

IN TESTIMONY WHEREOF, I hereunto subscribe my name and affix the seal of said Court, at the City of Washington, in said District, this 22nd day of March, 1939.

C. E. STEWART,

(Seal)

Clerk.

Endorsed on Cover: No. 7375. Potomac Electric Power Co., Appellant, vs. Cardillo, et al. United States Court of Appeals for the District of Columbia Filed Mar 27 1939 Joseph W. Stewart, Clerk.

IN THE
United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA.

APRIL TERM, 1939.

—
No. 7375.
—

POTOMAC ELECTRIC POWER COMPANY, a Corporation,
Appellant,

vs.

FRANK A. CARDILLO, Deputy Commissioner, United
States Employees' Compensation Commission,
District of Columbia Compensation District, and
Raymond W. Kicklighter, *Intervener.*

—
BRIEF OF APPELLANT.
—

S. R. BOWEN,
R. E. LEE GOFF,
Attorneys for Appellant.

August 29, 1939.

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IN THE
United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA.

APRIL TERM, 1939.

No. 7375.

POTOMAC ELECTRIC POWER COMPANY, a Corporation,
Appellant,

vs.

FRANK A. CARDILLO, Deputy Commissioner, United
States Employees' Compensation Commission,
District of Columbia Compensation District, and
Raymond W. Kicklighter, *Intervener.*

BRIEF OF APPELLANT.

JURISDICTIONAL STATEMENT.

This is an appeal from a Final Decree dismissing the appellant's complaint for an injunction arising out of the Longshoremen's Act (33 U. S. C. A.) made applicable to the District of Columbia by the Act of May 17, 1928. (D. C. Code, Title 19, Chap. 2) Under Sec. 21 of said Longshoremen's Act approved March 4, 1927 (33 U. S. C. A.) a review of compensation orders may be had in the District Court of the United States for the District of Columbia, and the right of appeal from said Court to this Honorable Court is provided by Title 18, Chap. 2, Sec. 26 of the D. C. Code.

STATEMENT OF CASE.

The intervener, Raymond W. Kicklighter, afterwards referred to herein as the claimant, filed a claim for compensation with the United States Employees' Compensation Commission on August 18, 1937, although the law creating said Commission required it to be filed within one year after the injury. The claimant testified that on May 24, 1935, while employed as a compressor operator for the Potomac Electric Power Company he sustained injuries when an air hose came loose at the connection with the compressor machine when a certain valve was turned on, and that the metal end of the hose struck him on the right side of the forehead, as a result of which he suffered swelling and laceration of the forehead. The evidence shows that the claimant was not rendered unconscious by the accident and did not fall to the ground as a result thereof. (Rec. 232) That he boarded a truck which took him immediately to Emergency Hospital; that he alighted therefrom and walked into the Hospital. (Rec. 231) There was no evidence of his being unconscious. (Rec. 50) When seen an hour later at the Hospital he was not unconscious and showed none of the symptoms of a concussion of the brain. (Rec. 111) The claimant remained in said Hospital two days, during which time he was not unconscious. At his request he resumed his regular employment with the appellant one week following the date of the accident and continued at such regular employment until September, 1935. Prior to the accident, during his employment by the appellant and thereafter, he suffered headaches and dizziness, without loss of time from work. The evidence further shows that the claimant voluntarily quit working for the appellant (Rec. 33) and went to work with the W. P. A. in October, 1935, performing work which

required the climbing of poles and stringing of wires and quit the same about January, 1936 (Rec. 34, 35), when he went to work at Bolling Field. There is no evidence in the record that claimant quit his work with the appellant because of any disability. Later in May, 1936, claimant at his request was reemployed by the appellant and was given the same or similar kind of work that he had done previously (Rec. 36), which work he continued to do until August, 1936. (Rec. 38) There is no evidence that the present dizziness and headaches claimed are in any appreciable degree greater than he had experienced prior to the filing of his claim (Rec. 10) if directly attributable to the accident. (Rec. 36, 37, 40) There is no sufficient or substantial evidence showing the claimant is now suffering from the effect of his accident of May 24, 1935.

In addition to the determination of the jurisdictional question whether claimant filed his claim within one year after the injury, the real question is what disability resulted to the claimant from his accident of May 24, 1935, and how or in what way was he prevented from performing the same kind or similar work he had been performing prior to the accident. In May, 1937, and subsequent thereto, claimant secured certain medical treatments. (Rec. 40) He also consulted certain physicians who testified for him at the hearing and who in greater part based their opinions and answers to hypothetical questions upon the uncorroborated statement of the claimant that he had been knocked unconscious as a result of the accident and the injury sustained of May 24, 1935, and the said physicians placed reliance thereon in reaching their several diagnoses that the claimant was suffering or was disabled as a result of the injury at the time they so testified. (Rec. 73, 98)

Hearings on the said claim were had before the Deputy Commissioner on May 24, July 28 and August 23, 1938 and the transcripts of the testimony taken at said hearings were made a part of the complaint for injunction; that on October 14, 1938, the Deputy Commissioner filed a compensation order awarding compensation to the said Raymond W. Kicklighter, which order and findings of fact are made a part of appellant's complaint in the Court below and marked "Exhibit A." (Rec. 5)

ASSIGNMENT OF ERRORS.

1. The Court erred in holding that the Findings of Fact and Award of the defendant Deputy Commissioner were supported by competent and sufficient evidence.

2. The Court erred in holding that the Findings of Fact and Award of the defendant Deputy Commissioner were in accordance with law.

3. The Court erred in holding that the Findings of Fact and Award of the defendant Deputy Commissioner were final and conclusive.

4. The Court erred in holding that the claim filed by the intervener, Raymond W. Kicklighter, on August 18, 1937 for injuries arising out of an accident occurring on May 24, 1935 was filed within the time prescribed by law.

5. The Court erred in refusing to vacate and set aside the Award of the defendant Deputy Commissioner and to enjoin the enforcement thereof as prayed in the Complaint.

6. The Court erred in sustaining the motions of the defendant Deputy Commissioner and the intervener and in dismissing the Complaint.

POINTS AND AUTHORITIES.

I.

The Claimant Kicklighter is Barred by Provisions of the Workmen's Compensation Act.

The Act of Congress creating the Workmen's Compensation Law for the District of Columbia provides in Section 13 (a) as follows:

“The right to compensation for disability under this Act shall be barred unless a claim therefor is filed within one year after the injury * * * .”

This requirement is jurisdictional. The accident in question occurred on May 24, 1935 and the claim for compensation was filed with the Commission on August 18, 1937. The liability of an employer is not fixed by the simple fact of injury to the employee arising out of and in the course of his employment, but the element of time within which a claim for compensation must be made enters into the very essence of the injured party's claim, and the extent of it. The making of the claim and the time thereof are matters going to maintenance of the right of action. Where a statute gives a right of action which does not exist at common law and fixes the time within which the right must be enforced, the time fixed is a limitation or condition attached to the right—it is a limitation of the liability itself as created, and not of the remedy alone. Being a limitation upon the right of action it must be strictly complied with. *Simmons v. Holcomb*, 98 Conn. 770, 120 A. 510; *DeMartino v. Siemon*, 90 Conn. 527, 97 A. 765; *Radezky v. Sargent & Co.* 77 Conn. 110, 58 A. 709; *Crocker v. Hartford* 66 Conn.

387, 34 A. 98; *Forbes v. Suffield*, 81 Conn. 274, 70 A. 1023.

In the case of *Walsh v. A. Waldron & Son*, 112 Conn. 579, 153 A. 298, the Court approved the doctrine in the previous cited cases and held that the statutory requirements with reference to time of filing claim were imperative and jurisdictional and admit of no variance or change. The same doctrine was approved in *Re Levangie*, 228 Mass. 213, 117 N. E. 200; *Schrabauer v. Schneider Engraving Product*, 224 Mo. App. 304, 25 S. W. (2d) 529; *Taylor v. American Employers Ins. Co.*, N. M., 3 Pac. (2d) 76; *Petraska v. National Acme Co.*, 95 Vt. 76, 113 Atl. 536. In several Illinois cases it has been held that the making of a claim for compensation is jurisdictional and a condition precedent to the employee's right to maintain an action for his injuries. *Bushnell v. Industrial Board*, 276 Ill. 262, 114 N. E. 496; *Ridge Coal Co. v. Industrial Commission* 298 Ill. 532, 131 N. E. 637; *American Car & Foundry Co. v. Industrial Commission*, 335 Ill. 322, 167 N. E. 80.

Also in *Spring Canyon Coal Co. v. Industrial Commission*, 58 Utah 608, 201 Pac. 173 it was held that the Utah Industrial Commission could not waive the Statute of Limitations in regard to a claim against the state insurance fund.

Also in Oregon it was held that the Commissioners cannot waive the filing of application for compensation. *Rohde v. State Industrial Acc. Comm.*, 108 Or. 426, 217 Pac. 627.

Our highest Court has held the time within which suit must be brought under the Federal Employers Liability Act of April 22, 1908, runs from the date of injury and is jurisdictional. *Flynn, exec. v. N. Y. N. H. & H. R. R. Co.*, 283 U. S. 53, 75 L. Ed. 837. The

decision of the Court in that case was delivered by Mr. Justice Holmes, in which he stated, among other things,

“The Act of 1908 gives a right of action to the employee, or, in case of his death, to his personal representative for the benefit of the widow and children and provides that no action shall be maintained unless commenced within two years from the day the cause of action accrued. Obviously Flynn’s right of action was barred, but it is argued that the right on behalf of the widow and children is distinct; that their cause of action could not arise until Flynn’s death, and that therefore the two years did not begin to run until September 1, 1928. But the argument comes too late.”

Other cases of the Court are also cited.

Where the Workmen’s Compensation Act itself fixes no limitation period, the right to present a claim is controlled by the general statute of limitations. This principle was recognized in the case of *Utah Consolidated Mining Co. v. Industrial Com.*, 57 Utah 279, 194 Pac. 657. The Court in its opinion said:

“There can be no denial of the fact that the Utah Industrial Act created a liability that had no existence prior to the enactment of the law. But it is contended by the Commission that a proceeding before it to recover compensation for an injury under the Industrial Act is not an ‘action’ within the meaning of the statute above quoted.”

In the above case it was contended by the plaintiff that a proceeding before the Commission for compensation is a special proceeding of a civil nature and therefore within the meaning of the statute of limitations. The Court continuing said:

“We can conceive of no reason why there should not be a limit of time within which a proceeding for compensation under the Industrial Act should be commenced. * * * For this reason we are inclined to the view that in passing the Industrial Act the legislature intended that the general Statute of Limitations should apply.”

Also in *Federal Rubber Co. v. Industrial Commission*, 185 Wis. 299, 201 N. W. 261 it was held where the title to the statute limiting the time for commencing actions made the statute apply to “actions and proceedings,” and the Workmen’s Compensation Act has no provision fixing the time for presenting a claim for permanent injuries when one for temporary injuries has been presented and paid, the provision of the limitation statute formerly applicable to actions for personal injuries will be applied, since the prosecution of the claim is a “proceeding” within the meaning of the Statute. The Court among other things said:

“When we consider the fact that the Workmen’s Compensation Act was enacted to secure a certain, speedy, and inexpensive method of adjusting such claims, and that the two limitations therein contained shorten the period from six to one and two years, respectively, we cannot believe that it was the legislative intent that claims not falling within those limitations should never be barred. The claim filed with the commission and its enforcement is the substitute for the common-law action, and, being such, it is subject to the same period of limitations in the absence of a contrary legislative provision.”

Also in *Davidson v. Payne* 281 Fed. 544, affirmed in C. C. A. 8th, 289 Fed. 69, in an action brought under

the Workmen's Compensation Law of Kansas, the court held that, as the act fixed no limitation for suits or actions brought thereunder, the provisions of the general statute of limitations of the state must apply.

Also in *Taylor v. Swift & Co.*, 114 Kan. 431, 219 Pac. 516 it was held that under the Workmen's Compensation Act, a workman's claim against his employer for injuries sustained in the service of the latter gave rise to a cause of action "on a liability created by statute," which was barred in three years under the Statute of Limitations.

Also in *Van Domelon v. Town of Vanden Broeck, et al.*, 212 Wis. 22, 249 N. W. 60, it was held that the fact the employer knew that the employee had become ill with heart trouble while at work does not render the employer chargeable with notice of injury the giving of which within thirty days is a statutory prerequisite to the allowance of workmen's compensation, where no accident causing visible physical injury has occurred and it does not appear that there were any objective symptoms which could be indicative to the employer during the thirty-day period of the occurrence of any compensable injury.

II.

Date of the Accident and Not Some Remote Date Thereafter Fixed the Time When the Statute of Limitations Began to Run.

The accident complained of, it is admitted, occurred on May 24, 1935 and the claim for compensation was filed with the Commission on August 18, 1937. It is therefore the position of the appellant that the claim for compensation herein is barred. The claimant

Kicklighter, on the other hand, while admitting the accident as having occurred on May 24, 1935 states the full facts of his injury were not known until a long time afterwards. Such a contention of the claimant is at variance with the facts in the case. The character of claimant's present symptoms are not essentially different but rather very much the same as they were prior to presenting this claim. (Rec. 37, 38, 40.) The claimant, therefore, is not in a position to plead ignorance of the result of the accident, he having had the same symptoms after the accident as now, and was put on notice as to his real condition. He cannot now be permitted to say that from May 24, 1935, the date of the accident, he had no symptoms, or any means of knowing his condition so as to make a claim for a compensable injury. The purpose of the law in making allowance for a compensable injury is based upon the theory that the claimant was disabled by an alleged injury, that is, he was unable to continue after the accident in the same kind of employment in which he was engaged at the time the injury complained of occurred. What was the disability of the claimant following the accident of May 24, 1935? The claimant testified he went to work a week after the accident and performed the same kind of work for a period of four months, or until September, 1935, when he quit voluntarily. (Rec. 33.) Moreover, when the claimant went to work with the W. P. A. in January, 1936, he performed work which required the climbing of poles and stringing of wires. (Rec. 34-35.) There is no evidence in the record that he quit this work because of any disability. That later on in May, 1936 he resumed employment with the Power Company and was given the same kind of work to do. (Rec. 36.) That he quit

this work voluntarily. Does this show he was disabled? Moreover, the claimant stated that he asked for further employment with the Power Company but was refused work but there is no evidence that he was not given work because of any disability. The fact is the claimant had complained of various things prior to the accident and had complained of similar symptoms subsequent thereto. There is no evidence that the present dizziness and headaches claimed are in any appreciable degree greater than he had experienced prior to the filing of said claim, if they are the direct result of the accident. There is no sufficient or substantial evidence showing the claimant is now suffering from the effects of his accident of May 24, 1935. It is also noteworthy to recall the claimant said at Rec. 23 it had been suggested by Dr. Morhart, the Company's physician, that he see Mr. King of the Workmen's Compensation Commission.

As previously stated the symptoms subsequent to the injury were not essentially different than they had been prior thereto and, moreover, the symptoms now shown to exist are not essentially different than those he had prior to the accident. The real question is, what disability resulted to the claimant from the accident of May 24, 1935 and how or in what way was he prevented from performing the same kind of work that he had been performing prior to the accident? As a matter of fact there is no evidence to show that he was disabled as the result of the accident to perform the same kind of work he had been doing, or similar work, or work requiring greater physical or mental strain, but, on the contrary, performed within a week after the accident the same kind of work he had been performing, and at later intervals performed the same kind of work, and performed for the W. P. A. work

requiring steadiness and physical and mental strain greater than was necessary in the performance of the work he had been doing for the Power Company. The contention of the claimant, therefore, that the full facts of his injury were not known to him until a long time after the accident, has no basis in fact.

We refer to some of the cases illustrating the principles contended for by the appellant, although we have been unable to find any decision of this Honorable Court exactly in point and there being a dearth of decisions in other Federal Courts as well. At the threshold it is well to bear in mind that the purpose of the Act is not to award compensation for mere pain or physical impairment, but for the resulting loss of earning power. The object is to make amends for disability attributable to the employment and the test is whether there is an incapacity or loss of earning power in whole or in part. *Hustus' Case*, 123 Me. 428, 123 A. 514.

One of the leading cases is *Cooke v. Holland Furnace Co.*, 200 Mich. 192, 202, 166 N. W. 1013, 1017. In that case the plaintiff received an injury to his head by reason of being struck by a flying bolt and at the time of the accident was given first aid treatment. Nonetheless, he continued his work but within a period of three months developed headaches and dizziness which within a year had increased to such an extent that he was forced to undergo an operation. He made no claim until one year after the accident, though the time limitation set forth in the statute was six months. The Supreme Court of Michigan denied compensation and stated:

“While the words ‘accident’ and ‘injury’ are not synonymous, the accident produced the injury and in point of time they were concurrent. We

are compelled to hold, must hold, unless we resort to judicial legislation, that the legislature * * * fixed the date of the injury at the time of the accident, and not some remote date thereafter, when the injured employee became definitely satisfied that he was disabled as a result of the accident."

The phraseology of the Michigan statute in respect to the time of limitation of claims is similar to that used in the Longshoremen's and Harbor Workers' Compensation Act.

The Court also said that its duty under the Constitution

" * * * is not to enact, but to expound, the law; not to legislate, but to construe legislation, to apply the law as we find it, and to maintain its integrity as it has been written by a co-ordinate branch of the state government. If the law, as written, works hardships in a special class of cases, the remedy lies with the branch of the government charged with the duty of enacting laws. If one does not protect himself and his rights under the law as written, it is his misfortune, and this court should not by judicial legislation, for the purpose of relieving that misfortune, write into the statute a provision that the legislature has not seen fit to enact."

To the same effect was the language used by Mr. Justice Marshall, speaking for the Supreme Court of Wisconsin, in *Milwaukee v. Miller*, 154, Wis. 652—a case involving the Workmen's Compensation Law of that State—that if one does not protect himself and his rights under the law as written, that is his misfortune and however much it may be regretted, it is far better that the integrity of the law be not invaded than that it be impaired in the slightest degree in the

particular instance to avoid the consequence of his not knowing or appreciating its requirements.

Prior to legislation providing for workmen's compensation the courts had to deal with statute of limitations, having relation to common-law or statutory actions for negligence, and the holdings of the courts were in harmony—that the injury occurred and the statute began to run on the happening of the negligent act. At the time of the enactment of the Longshoremen's and Harbor Worker's Compensation Act, later made applicable to the District of Columbia, the word "injury" had acquired in the law a well-defined and well-understood meaning. Section 2, paragraph (2) of the said Act provides:

"The term 'injury' means accidental injury or death arising out of and in the course of employment, and such occupational disease or infection as arises naturally out of such employment or as naturally or unavoidably results from such accidental injury, and includes an injury caused by the willful act of a third person directed against an employee because of his employment."

It is submitted that while the words "accident" and "injury" may not be synonymous, the accident produced the injury, and in point of time they were concurrent. To hold that a claim for disability may be filed after one year from the date of the accident, necessarily requires a new definition of the word "injury".

The Supreme Court of Illinois has had this question of limitation of time for filing a claim for compensation before it, and has held such provision mandatory, and the claim barred, unless made within the time. *Haiselden v. Industrial Bd.* 275 Ill. 114, 113 N. E. 877; *Bushnell v. Industrial Bd.*, *supra*.

In *Ehrhart v. Industrial Accident Comm.*, 172 Cal. 621, the Supreme Court of California said:

"It is not, we believe, the intention of the law-makers to open the Statute of Limitations, and to extend it beyond the period of six months, for the purpose of enabling a claimant to present an entirely new case, based upon the alleged results of an injury which had never before been called to the attention of the commissioners. To hold otherwise would be to make the statute an instrument for the encouragement of false claims, or those based upon remote and unsatisfactory speculation and peradventure regarding the cause of a disability manifesting itself long after the happening of the accident.

We wish to further state, however, that there are certain cases involving occupational or industrial diseases, but they are inapplicable to a situation of this kind.

There is no provision of the Workmen's Compensation Act which permits the Deputy Commissioner to waive the requirement to file a claim within one year after the injury, which we insist in this case must be the date of the accident. In the case of *Hoage v. Employers Liability Ins. Corp.*, 62 App. D. C. 77, a claim was made for the hospital and doctor bills contracted without notice to the employer. This Court reversed the decision of the Deputy Commissioner and stated:

"There is no provision of the Act which permits the Deputy Commissioner to waive the requirements in this respect."

As we construe this decision it establishes a principle which should be followed here, that is to say, it was not the intention of Congress to open the period

of limitation for the purpose of enabling the claimant to present an entirely new case based upon the alleged results of an injury which had never before been called to the attention of the Company nor the Commission, or to enlarge the powers of the Commission so as in effect to waive the statutory period for the time of filing a claim. The claim for compensation, therefore, should have been filed as required by the Act within one year from the date of the accident of May 24, 1935, as required by the Workmen's Compensation Act. Had Kicklighter made his claim for compensation as required by the Act and received proper medical treatment, this would have been beneficial alike to him and his employer. To hold that the date of the accident does not fix the date of the injury, but that some remote date thereafter may be taken for the purpose of filing a claim, would amount to judicial legislation and would be equivalent to enlarging the provisions as to the requirement when a claim may be filed, or permitting it to be waived by the Commission.

The case of *Commercial Casualty Ins. Co. v. Hoage*, the so-called *Harry P. Lutz case*, being Equity No. 57926 in the then Supreme Court of the District of Columbia, was cited by counsel for appellee, and he will probably rely upon it herein. We respectfully submit that the opinion of Mr. Justice Adkins in a lead poisoning case is not applicable to this situation, because the injury here is clearly not one of occupational disease which may take many years to become manifest. Herein a man was struck on the head, receiving medical attention and returning to work within a week. He continued to work at the same job for several months, and resigned and took another job which was just as difficult and hard to do. He com-

plained of headaches and dizziness, but did nothing about it until some two years later. The two cases are essentially of a different type and clearly distinguishable.

III.

The Court Below Erred in Holding That the Findings of Fact and the Award of the Deputy Commissioner Were Supported by Competent and Sufficient Evidence.

The case of *Indemnity Insurance Company of North America v. Hoage, Deputy Commissioner* (Voehl, Intervener), 61 App. D. C. 173, this Honorable Court speaking through the late Justice Van Orsdel stated at page 174:

“To determine whether or not the commissioner’s conclusions of law are correct, it is necessary for the court to ascertain whether they are supported by sufficient evidence. An order based upon insufficient evidence is an order contrary to law, and to determine this question a review of the evidence becomes essential. As was stated in *Interstate Commerce Commission v. Louisville & Nashville R. Co.*, 227 U. S. 88, ‘the legal effect of evidence is a question of law. A finding without evidence is beyond the power of the Commission. An order based thereon is contrary to law, and must, in the language of the statute, be set aside by a court of competent jurisdiction’ ”.

To determine whether or not there is sufficient evidence to support the Deputy Commissioner’s findings of fact, it is necessary to examine the whole record, not merely those parts which are most favorable to either party.

Again this Court in the case of *Fidelity & Casualty Company of New York v. Burris* and *Burris v. Hoage*, 61 App. D. C. 228, stated:

"It is first insisted that both the lower court and ourselves are bound by the findings of fact of the deputy commissioner, but it is sufficient to say as to this that we have many times held that, upon a review of the record made before the deputy commissioner, our duty is to determine whether the testimony taken before the deputy commissioner will sustain his finding. * * *"

On May 24, 1935, the claimant Kicklighter was injured. He says he was rendered unconscious. Examination by Deputy Commissioner P. 50 of the Record:

"Q. At the time of your examination, Doctor, did you find any evidence of unconsciousness? Had there been an unconsciousness before you saw him?"

A. Only that statement given here by the patient, the statement of the patient that he was unconscious for a short time.

Q. Did you find any evidence of unconsciousness?

A. When I saw him?

Q. Yes.

A. I can't answer that, either, because I don't remember." (Underlining ours)

Joseph White, who took Kicklighter to the hospital in a truck, testified at page 231 of the Record:

"Q. And at no time did you see him unconscious?"

A. No, sir; not with me he wasn't."

The best evidence of a person's condition, we submit, is the testimony of those persons who saw or had an opportunity of seeing him at the time of the alleged accident. White was in a better position to know whether Kicklighter was unconscious than any other person. White further testified that Kicklighter "did not even fall down" when he was struck. (Rec. 232.) Dr. Morhart, a physician for the appellant, also said that when he saw Kicklighter an hour after the accident he was not unconscious and showed none of the symptoms of a concussion of the brain. (Rec. 111.) No physician called by Kicklighter saw him at the time of the accident, or saw him unconscious as a result of the accident, although at a subsequent date his physicians were informed by Kicklighter that he was knocked unconscious. This is borne out by Dr. Berenstein, the interne at Emergency Hospital where Kicklighter was taken on the day of the injury, as just mentioned. (Rec. 46.) It is necessary, therefore, to have this clearly in mind because, notwithstanding the statement made by Kicklighter to Dr. Berenstein, the interne, that he was unconscious for a short time, it is at variance with the other facts stated by Dr. Berenstein to the effect that when Kicklighter was brought to the hospital the injury did not indicate or show that Kicklighter had suffered a marked concussion of the brain; that he found none of the usual symptoms that would have been found in a case of marked concussion. Thus all of the testimony of the physicians called by Kicklighter, and who were largely called upon to answer hypothetical questions, was on the assumption at the outset that Kicklighter had been knocked unconscious by the injury. In other words, the conclusions of the

Deputy Commissioner are not supported by sufficient evidence and but for the fact that such physicians called by Kicklighter relied upon his uncorroborated statement that he had been knocked unconscious, they, in making their diagnosis, would have reached necessarily different opinions concerning the nature of the claimant's injury. This is clearly shown by reference to the testimony of Dr. Gillis (Rec. 98) where he stated:

“Well, if I assume that to be true just as you give it, that history, it would be doubtful if he had the type of injury I believe he has had.”

Thus the testimony of Dr. Gillis as well as Dr. Spear, called for the claimant, was based upon subjective symptoms or history furnished by Kicklighter and not upon actual facts within the knowledge of those physicians. Said physicians laid great stress and dependence upon the history furnished them by Kicklighter; the conclusion of Kicklighter's physicians being subjective and based upon the narration of facts to them by him. As heretofore stated Dr. Morhart, who saw Kicklighter within an hour after his injury, testified that he was never unconscious; that he, Kicklighter, sustained no brain concussion and was discharged from the hospital after being there for two days; that later he saw Kicklighter and removed the sutures and then later—all within a week—when the claimant Kicklighter came to him to be certified back to work and after Dr. Morhart had asked him as to his physical condition, he, Kicklighter, stated he had no pain or suffering and wanted to go back to work. (Rec. 112.) The conclusions and opinions of Dr. Stout and Dr. Stuart, called by the appellant, are in accord with

the actual facts heretofore stated, so that these physicians had no hesitancy in reaching the conclusion that the claimant Kicklighter had no surgical shock, had no brain injury or disease and was not and is not now, disabled from pursuing the same avenues of employment that he was capable of following prior to the accident. In other words, that the claimant was malingering. The testimony of Doctors Stout and Stuart clearly shows that Kicklighter is a constitutional psychopath and is that type of individual who has never had a full mental development, but is the type of individual to make a claim not based upon any real facts to justify the same. That the claim of Kicklighter is fictitious and is not, therefore, meritorious. The type of individual that claimant Kicklighter is, as testified to by Doctors Stout and Stuart, is corroborated by the testimony of a disinterested witness named Daniels who served in the Army with him at Fort Hoyle, Maryland and who stated that Kicklighter was in Battery A, Sixth Field Artillery, and was shaughailed to a Service Battery because he could not do the work required of him; that he was given the task of driving mules and attending to them; that during the time he knew Kicklighter he was frequently trying to get on the sick list, at least once a week, and at times he had attempted to fool the army doctors by using G. I. soap which was placed under his armpits to raise his temperature. (Rec. 233-7.) Said disinterested witness, as well as fellow employees of Kicklighter, testified that Kicklighter appeared physically no different now than when they worked with him prior to the accident. We also should keep in mind that this accident occurred May 24, 1935, yet this claimant waited until March, 1937 (Rec. 40) to see the physicians whom he called at the hearing.

Does it seem reasonable that a man who states he was suffering as the claimant says he was suffering would go for a year and ten months without trying to find why he was suffering. Claimant Kicklighter was asked at p. 40 of the Record:

"Q. Up to the time that you started to get medical treatment, the only complaint that you thought you had was this headache and dizziness?"

"A. Yes."

The claimant had similar symptoms prior to the accident. (Rec. 234.)

We respectfully submit the evidence is insufficient to justify the findings of the Deputy Commissioner.

CONCLUSION.

From the foregoing and for the reasons set out at length herein, it is respectfully submitted the action of the Lower Court in holding that the claim for compensation was filed within one year after the injury complained of and that the findings of fact and award of the Deputy Commissioner were in accordance with the law, and are supported by competent and sufficient evidence, should be vacated and set aside; that the award herein should be vacated and that the enforcement of said award should be permanently restrained and the decree of the Lower Court in dismissing the appellant's bill should be reversed and the proceedings with respect thereto remanded for such other and further action as this Honorable Court may direct.

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R. E. LEE GOFF,

Attorneys for Appellant.

August 29, 1939.

No. 7375 FILED SEP 29 1939

Joseph W. Stewart
In the United States Court of Appeals
for the District of Columbia

JANUARY TERM, 1939

SPECIAL CALENDAR

POTOMAC ELECTRIC POWER COMPANY, A CORPORATION,
APPELLANT

v.

FRANK A. CARDILLO, DEPUTY COMMISSIONER, UNITED
STATES EMPLOYEES' COMPENSATION COMMISSION,
DISTRICT OF COLUMBIA COMPENSATION DISTRICT,
AND RAYMOND W. KICKLIGHTER, APPELLEES

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STATUTES

District of Columbia Workmen's Compensation Act of May 17, 1928 (45 Stat. 600, Chapt. 612, Sec. 1; D. C. Code, Title 19, Chapt. 2, Sec. 11)_	1
Longshoremen's and Harbor Workers' Compensation Act of March 4, 1927 (44 Stat. 1424; U. S. C. Title 33, Chapt. 18, Secs. 901 et seq.)_	1

**In the United States Court of Appeals
for the District of Columbia**

JANUARY TERM, 1939

No. 7375

SPECIAL CALENDAR

**POTOMAC ELECTRIC POWER COMPANY, A CORPORATION,
APPELLANT**

v.

**FRANK A. CARDILLO, DEPUTY COMMISSIONER, UNITED
STATES EMPLOYEES' COMPENSATION COMMISSION,
DISTRICT OF COLUMBIA COMPENSATION DISTRICT,
AND RAYMOND W. KICKLIGHTER, APPELLEES**

*APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES
FOR THE DISTRICT OF COLUMBIA*

BRIEF FOR APPELLEES

STATEMENT OF CASE

This case arises under the provisions of the District of Columbia Workmen's Compensation Act of May 17, 1928 (45 Stat. 600, Chapt. 612, Sec. 1; D. C. Code, Title 19, Chapt. 2, Sec. 11), making applicable to employees in certain employments in the District of Columbia the Longshoremen's and Harbor Workers' Compensation Act of March 4,

1927 (44 Stat. 1424; U. S. C. Title 33, Chapt. 18, Secs. 901 et seq.), which will be hereinafter referred to as the "compensation law."

On May 24, 1935, at about 3 o'clock p. m., while employed as a compressor operator at 18th and R Streets Northwest, Washington, D. C., by the Appellant, Potomac Electric Power Company, the Appellee, Raymond W. Kicklighter, sustained personal injury when the air hose connection to a compressor machine became loose, causing the metal end of the hose to strike him on the right side of the forehead, as a result of which he suffered swelling, laceration of the forehead, and *concussion of the brain*. He was immediately removed to Emergency Hospital and was there treated for concussion, including two sutures for the laceration of the forehead (R. 44), kept under observation for two days and then allowed to go home, *but he returned to his work within seven days* (R. 2, 6, 18, 196). He continued his work until the month of September, 1935, when he resigned, and later secured employment with the Works Progress Administration, where he worked during two separate periods of time until he was reemployed by the appellant in May, 1936, and continued to work for appellant until August 7, 1936 (R. 2, 7). During all this time after his injury to his head he suffered spells of headache and dizziness, which were severe at times and gradually became worse, but he suffered no disability for work (R. 7, 19, 20, 21, 23, 41, 216, 217, 221). Thereafter Kicklighter tried to get back to work for the

appellant and he also requested further medical treatment to relieve his suffering, but his employer refused to furnish such treatment (R. 24). He was then reemployed by the Works Progress Administration, and on November 16, 1936, during a severe spell of dizziness and headaches, he had to quit his work (R. 40, 41). He thereafter suffered spells of amnesia and was sent to the relief clinic at Emergency Hospital on March 17, 1937 (R. 51), where it was found *for the first time* by competent medical specialists that Kicklighter was suffering from the effects of the accident he sustained on May 24, 1935 (R. 55, 80, 81, 94, 171). He filed his claim for compensation on August 18, 1937 (R. 13), which was more than one year from the date of the accident, but within one year from the time his disability became compensable, and also within one year from the time he became aware of the fact that his condition resulted from the accident (R. 40, 41). Formal hearings on said claim were held before the deputy commissioner on May 24, July 28, and August 23, 1938, and based upon the evidence adduced at said hearing, the deputy commissioner filed on October 14, 1938, a compensation order awarding compensation to the appellee, Raymond W. Kicklighter. The complaint filed below set forth in substance that the findings of the deputy commissioner were not based upon substantial evidence and that the claim for compensation was not filed within the time allowed by law (R. 4).

PERTINENT STATUTES

U. S. C., Title 33, Chapter 18:

SEC. 906 (a). No compensation shall be allowed for the first seven days of the disability, except the benefits provided for in section 7: *Provided, however,* That in case the injury results in disability of more than forty-nine days, the compensation shall be allowed from the date of the disability (44 Stat. 1426, Chapt. 509, Sec. 6 (a)).

SEC. 913 (a). The right to compensation for disability under this Act shall be barred unless a claim therefor is filed within one year after the injury, and the right to compensation for death shall be barred unless a claim therefor is filed within one year after the death, except that if payment of compensation has been made without an award on account of such injury or death a claim may be filed within one year after the date of the last payment. Such claim shall be filed with the deputy commissioner in the compensation district in which such injury or such death occurred (44 Stat. 1432, Chapt. 509, Sec. 13 (a)).

QUESTION PRESENTED

It appears from the record that the principal question involved in this litigation is whether the limitation in section 13 (a) of the compensation law (33 U. S. C., Sec. 913 (a)), relating to the filing of a claim for compensation, begins to run from the date the employee's injury becomes dis-

abling and compensable and he has knowledge or has become aware that his condition or disability resulted from the accident, or whether said limitation begins to run from the date of the "accident" notwithstanding the fact that compensable disability does not exist and the employee is unaware of a condition for which his employer ultimately may have liability for the payment of compensation.

It is respectfully submitted that Mr. Justice O'Donoghue properly held in effect that said limitation in section 13 (a) does not begin to run until the injury resulting from the accident becomes disabling and compensable and the employee has knowledge that his condition resulted from the accident (R. 248, 249).

SUMMARY OF ARGUMENT

1. The findings of fact of the deputy commissioner relating to the injury sustained by Kicklighter and the filing of his claim for compensation for disability resulting therefrom, and the findings of fact of the court with respect thereto, are supported by competent evidence, and should therefore be regarded as final and conclusive.

2. The employee's claim for compensation in this case was timely filed because (a) it was filed within one year from the date that the injury resulting from the accident became disabling and compensable, and (b) it was filed within one year from the

date the employee had knowledge that his condition resulted from the accident. While the claim was filed more than one year from the date of the "accident," it was nevertheless filed within one year "after the injury," within the meaning of section 13 (a) of the compensation law.

ARGUMENT

General rules

1. The compensation law should be liberally construed in favor of the injured employee or his dependent family; *Baltimore & Philadelphia Steamboat Co. v. Norton, deputy commissioner*, 284 U. S. 408; *Fidelity & Casualty Co. of New York v. Burris*, 59 F. (2d) 1042, 61 App. D. C. 228; *DeWald v. Baltimore & O. R. Co.*, 71 F. (2d) 810 (C. C. A. 4), certiorari denied October 8, 1934, 293 U. S. 581.

2. In the absence of substantial evidence to the contrary, the presumption is "That the claim comes within the provisions of this Act"; section 20 (a) of the compensation law.

3. The findings of fact of the deputy commissioner supported by evidence should be regarded as final and conclusive and not subject to judicial review; *Del Vecchio v. Bowers*, 296 U. S. 280; *Voehl v. Indemnity Insurance Co. of North America*, 288 U. S. 162; *Crowell, deputy commissioner, v. Benson*, 285 U. S. 22; *Jules C. L'Hote et al. v. Crowell, deputy commissioner*, 286 U. S. 528; *Pacific Employers' Insurance Co. v. Pillsbury, deputy commissioner*, 61 F. (2d) 101 (C. C. A. 9);

Lumber Mutual Casualty Insurance Co. of New York v. Locke, deputy commissioner, 60 F. (2d) 35 (C. C. A. 2); *Independent Pier Co. v. Norton, deputy commissioner*, 54 F. (2d) 734 (C. C. A. 3).

4. It is solely within the province of the deputy commissioner or compensation administrator to determine the credibility of witnesses, and such official may believe all or any part of the testimony according to his own sound judgment of its truthfulness and reliability; *Wilson & Co., Inc., v. Locke, deputy commissioner*, 50 F. (2d) 81 (C. C. A. 2); *Rakowski's case*, 273 Mass. 363, 173 N. E. 521 (Mass. 1930); *Benjamin v. Rosenberg Bros. et al.*, 180 App. Div. 234, 167 N. Y. S. 650 (1917), *aff'd* 223 N. Y. 569, 119 N. E. 1030.

Findings of fact of the deputy commissioner and of the court are supported by competent evidence and should be regarded as final and conclusive

The deputy commissioner found in the compensation order of October 14, 1938, complained of by appellant, the facts relating to the injury sustained by Kicklighter, and the filing of his claim for compensation for disability resulting therefrom, to be, in part, as follows (R. 7, 8):

that in May of 1937 the claimant was referred to the Emergency Hospital by the Public Welfare Bureau because his symptoms had become unbearable; that treatment for headaches, dizziness, and nervousness was furnished him at the said institution; that in May or June 1937, following exami-

nation by the attending psychiatrist, the claimant was informed that he was suffering from a brain condition caused by the injury sustained on May 24, 1935; that on August 18, 1937, he filed a claim for compensation; that he has been receiving medical treatment to date; that as a result of the injury sustained on May 24, 1935, the claimant suffered brain injury which caused deterioration of the brain substance; that prior to May 24, 1935, the claimant was active, ambitious, industrious, conscientious, and a responsible individual of average intelligence; that his school progress was normal; that at the age of sixteen, after two years in high school, he dropped his studies to help his father on the farm; that his industrial progress thereafter was normal; that he served in the United States Army as a cook for several years, advancing from a fifth grade rating to a second grade rating; that the nature of the work which he performed for the employer herein, operating a compressor and digging rig and having control of the levers, required a fair degree of intelligence and responsibility; that up to the time of the injury he got along well and his work was satisfactory; that the only manifestations following the injury were occasional headaches and dizziness which were not sufficient to prevent his continuing at work for more than a year; that the condition resulting from the injury was progressive in nature and as time went on the symptoms grew gradually worse; that

he was undergoing a definite change due to the injury sustained; that he became dull, careless, worried, nervous, irritable, depressed, and confused, and that at times he suffered lapses of memory and delusions of persecution; that all of the said symptoms resulted from the injury; that the claimant became aware of the nature and cause of his condition approximately in May of 1937, after the symptoms had become severe and unbearable, and after he had secured medical treatment and advice; that the injury sustained on May 24, 1935, was slowly progressive and became compensable on or about November 16, 1936; that beginning the latter date he was incapacitated for performing his work; that the claim filed on August 18, 1937, was timely filed and within one year from the time that the injury became disabling and compensable and also within one year from the time he was aware of the nature and cause of his disability.

The lower court it is respectfully submitted properly found that the findings of fact of the deputy commissioner are supported by competent evidence and are, therefore, final and conclusive (R. 248).

It will be seen from the following brief narration of a portion of the testimony taken before the deputy commissioner that the findings of fact, complained of by appellant, are supported by competent evidence.

RAYMOND W. KICKLIGHTER

Raymond W. Kicklighter, the claimant, testified that he began to work for the Potomac Electric Power Company in July 1933 (R. 14); that on May 24, 1935, he was operating a rigger and compressor machine while in the employ of that company and was injured on that day at about 2:30 or 3 o'clock p. m., when he turned on the air of a "gun", *and the next thing he knew he found himself in the Emergency Hospital* where he stayed about two days; that he was injured on the *right side of the forehead and the back of the head* (R. 18, 19); that about seven days after his discharge from the hospital he returned to work on the same machine on which he continued to work until September 1935 (suffering from headaches all that time), when he "fell out" on the job (R. 19, 20, 21, 22, 23); that he requested the employer to furnish further medical treatment, which was refused (R. 24); that one day in the fall of 1936 he just could not hold himself on the machine and he lay down on the ground by the fire and "that is all that I knew"; that the next thing he remembered was that he was in Savannah, Georgia (R. 24, 25); that between May and September 1935, he had headaches and a pounding on the right side of his head (R. 36); that *the last day that he worked was November 1936*, when he stopped work *because of a terrific headache which he could not stand*; that *he first learned in March or May 1937, the reason*

for his headaches when his wife told him that the doctor said they were caused by a blow on the head (R. 40, 41). (It was noted in the record that the claimant "answers the questions very slowly and after some deliberation" (R. 42).)

It was shown by the testimony of Hilda Prusser (R. 87, 107, 108), Royal Bartlett (R. 109), Earle A. Horsley (R. 181, 182), Catherine L. Dice (R. 183, 184), Audrey Kicklighter (R. 212, 214, 217, 221, 224), and Edward B. Ault (R. 202, 206) that prior to the accident suffered by Kicklighter on May 24, 1935, he was a hard-working man, ambitious, and quiet; that he performed his work for the Potomac Electric Power Company satisfactorily and made no serious mistakes, but that at times after the accident Kicklighter acted like a dope fiend, "would fly off and had a bad temper," suffered from hallucinations, loss of memory, headaches, etc.

RALPH P. WINDHAM

Ralph P. Windham testified that he had known Kicklighter since 1927, when the latter was employed as a cook in the United States Army; that the claimant was a man you could depend on and "*above the average soldier*"; that he had never seen him take a drink or *under the influence of liquor* (R. 209); that he did satisfactory work for a period of about 2½ years; that he had not seen him since 1929, until recently when he met him in the park and he failed to recognize him, *because he had*

changed in his looks and his talk; that when the claimant was a soldier he could hold a sensible conversation, but now he sometimes "flies up" and does not know what he is talking about (R. 210); that the claimant began his employment as a cook with a fifth-class rating and had a second-class rating when he left, which was a much higher rating (R. 211).

DR. STANLEY H. BERENSTEIN

Dr. Stanley H. Berenstein testified that he was a practicing physician in the District of Columbia and was an interne at the Emergency Hospital on May 24, 1935 (R. 42); that the hospital records showed that Kicklighter was injured while on duty for the Potomac Electric Power Company when he was struck on the head by an air hose and *knocked unconscious for a short time*, sustaining laceration of the forehead on the right side; that physical examination made at that time showed a *swelling about the size of a walnut over the right eyebrow* and also a small laceration of the forehead and *concussion* (R. 43, 44); that in this case he thought the injury was sufficiently severe to keep Kicklighter in the hospital and to wait for Dr. Morhart and watch him for a few days (R. 45).

DR. MORRIS SILVERMAN

Dr. Morris Silverman testified that he was a practicing physician in the District of Columbia and was at the present time connected with the clinics at the Emergency Hospital and Gallinger

Hospital; that on *March 17, 1937*, he saw Kicklighter for the first time (R. 51); that his general complaint was severe headache, loss of memory, nervousness, and dizziness, and he gave a history of an injury in May 1935 when an air hose hit him on the head and *knocked him unconscious for a couple of hours*, and of having had several periods of unconsciousness and loss of memory since that time; that he found on examination that Kicklighter's reflexes were slightly retarded and he was suffering from amnesia or loss of memory of a periodic type and a *disease due to a brain injury*; that during his medical experience he had had considerable experience with mental cases and had done considerable postgraduate work along that line (R. 52, 53); *that he believes that the injury received May 24, 1935, was the cause of the claimant's present condition and does not think that he can do satisfactory work due to his lapse of memory and he is not dependable* (R. 55); that he bases his opinion as to Kicklighter's disability on past history, his appearance, and previous examinations, delusions of persecution, etc. (R. 62); that in his opinion the claimant would not be able to take a job as a watchman because of his absent-mindedness (R. 65).

DR. IRVING J. SPEAR

Dr. Irving J. Spear testified that he examined Kicklighter on February 19, 1938 (R. 68); that he took X-rays of his brain, *which show a very definite wasting of the brain substance* and as a result

of the claimant's history, mental examination, and X-rays he came to the conclusion that his condition, his difficulty in concentrating, his slow reaction time, *was the result of the wasting away of the brain substance*; that if the history of the case was true that he was injured by this air hose, and that before that time he was a very energetic and active man, *the wasting away of the brain was the result of the injury he sustained*; that in this particular kind of injury, a concussion, *there is a diffuse concussion consisting of small hemorrhages, "very small breaks in the small vessels," which result in scar tissue which, in contracting, reduces the substance of the brain*, and it is his opinion that if the history is true, the wasted brain, the slow reaction time, the pains and headaches, etc., *were the direct result of the injury*; that these conditions are *permanent since the brain never replaces itself* (R. 70, 71, 72); *that the claimant's condition would not become manifest immediately after the accident except in the form of headaches and dizziness* (R. 72); that he estimates the claimant's disability at about 75 percent because he works slower than the average individual and is unreliable (R. 73); that if he were told that Kicklighter had headaches and dizziness prior to the accident his opinion would be that the injury would *make the condition worse*; that the spinal fluid showed that Kicklighter "had some condition in his brain which was causing a wasting away of the tissues"

(R. 79); that in his opinion his condition resulted from the accident (R. 80, 81).

DR. ANDREW F. GILLIS

Dr. Andrew F. Gillis testified that he was a practicing physician and had specialized in neurology and psychiatry for 25 years and is now a visiting neurologist and neuropsychiatrist at a number of hospitals (R. 87, 88); that he examined Raymond W. Kicklighter in February 1938; that the claimant complained of headaches, loss of memory, and he came to the conclusion that claimant had a degenerative condition of the brain (R. 89); that assuming the history given by the claimant that he was quite well for years previous to his injury and that his symptoms followed the accident and in view of his own examination he believed that the *claimant's entire condition was due to the injury he received on May 24, 1935; that he thinks the claimant is almost totally disabled* since he might have a period of amnesia or headache during his work; that he is not capable of doing any heavy work requiring strength (R. 90); that, if we assume that Kicklighter was despondent, irritable, etc., prior to the accident, in witness's opinion the injury aggravated *the condition, and that "he is probably now worse than he was previously"* (R. 96); that *he does not think that the claimant has shown any sign of malingering* (R. 99); that there is no doubt whatsoever in his mind that this is not a case of

neurosis or anxiety or fear, but that it is a clear case of *brain damage due to injury* (R. 103); that even if the injury did not render the claimant unconscious it was sufficiently severe to cause the symptoms in this case, witness testifying on this point as follows (R. 103, 104):

Q. I would like to ask you one question, Dr. Gillis. Mr. Bowen asked you a question: Assuming that Mr. Kicklighter was not unconscious and so forth, and he walked to the hospital, would that injury be sufficient to cause his present condition? Now, I want to ask you this: If the air hose that hit him because of a loose connection was forced by 90 to 100 pounds of air pressure, striking him in the forehead, and he was found upon examination in the hospital to have a swelling where this blow struck him, the size of a walnut, would you say that that would cause a serious concussion?

A. I could; yes.

Q. And that could cause the injury that he got?

A. Oh, yes. As I said awhile ago the amount of trauma, *the amount of force doesn't always determine what the effects will be. Sometimes a trivial injury could cause very serious symptoms*—for instance a person falling on a slippery floor and striking the back of his head and dying as a result of it. A dozen other people might fall and simply feel a little dazed. The same thing applies to all injuries. A man might fall and break his thigh. A hundred other

persons might fall in the same way and not break their thigh. The same thing applies to the brain and skull.

Q. Then, even if this claimant was not rendered unconscious, he may have received sufficient injury to cause these symptoms?

A. *Yes; he may have had a hemorrhage of the brain, a hemorrhage into the brain in the smaller areas.* There is no gross hemorrhage at all; or there would be very definite organic symptoms in the reflexes, paralysis and so on.

DR. ROGER S. COHEN

Dr. Roger S. Cohen, psychiatrist of the Emergency Hospital, testified that he was a practicing physician and a member of the American Board of Neurology and Psychiatry and also a member of the District of Columbia Commission on Mental Hygiene; that he examined the claimant beginning on April 6, 1937 (R. 162, 163); that he thinks that the claimant certainly is not able to work as he was previous to the accident *and that his present condition is the result of the injury sustained on May 24, 1935* (R. 171); that prior to the injury he would not classify Kicklighter as a "constitutional psychopath" (R. 171, 172); that he is "suffering from traumatic neurosis" (R. 172).

DR. J. DUERSON STOUT

Dr. J. Duerson Stout was called as a witness on behalf of the employer and testified, among other

things, that he was a practicing physician specializing in nervous diseases (R. 117); that a man may have suffered a brain injury and be unconscious only for a half hour thereafter (R. 139); that "in the famous American crowbar case a crowbar went into a man's left ear and come out on top of his head yet he was unconscious very briefly" (R. 139).

It will be seen from the foregoing that there is clearly no merit to the contention of appellant set forth on pages 17 to 22 of its brief to the effect that the court below erred in holding that the findings of fact of the deputy commissioner were supported by evidence. The evidence clearly establishes:

(a) That Kicklighter was first employed by the appellant in the month of July 1933 (R. 14) at which time he was in good health;

(b) That his work was satisfactory and he was dependable (R. 204);

(c) That he progressed in his work, advancing from a laborer to a compressor and rigger operator (R. 15, 16), which required care and skill to operate (R. 32);

(d) That he was injured May 24, 1935, while performing service for appellant (R. 17, 18, 19), was taken to Emergency Hospital and kept under observation for two days (R. 45), remained at home several days, and returned to work within a week after the accident (R. 196, 216);

(e) That he suffered headaches and dizzy spells from the time of his injury, which gradually grew more severe until he was disabled (R. 220, 221);

(f) That he has not been able to work since the month of November 1936 (R. 221, 222, 223);

(g) That he did not know that the accident of May 24, 1935, caused his injury and disability until about March or May 1937 (R. 41);

(h) That he filed his claim for compensation August 18, 1937 (R. 2), well within one year from the time his injury became disabling and compensable, and within one year from the time he became aware that his condition resulted from the accident (R. 40, 41).

Moreover, all the doctors who testified on behalf of Kicklighter personally examined him, and some of them treated him over a long period of time. In considering the history of his case these medical witnesses took into account the undisputed facts set forth above and were, without exception, not interested in the outcome of his claim for compensation. Dr. Silverman testified that in his opinion Kicklighter could not perform work satisfactorily due to his lapses of memory and the fact that he is not dependable (R. 55). Dr. Andrew C. Gillis testified that in his opinion Kicklighter is to all intents and purposes totally disabled as the result of the injury (R. 94, 95). Dr. Roger S. Cohen testified that "he certainly is not able to work as he was previous

to the accident. There is no doubt about that" (R. 171). Dr. Irving J. Spear testified in answer to the question of Kicklighter's disability, "I know him to be disabled" (R. 73).

On page 18 of appellant's brief an attempt is made to convince the Court that the injury sustained by Kicklighter did not render him unconscious. The testimony of the employee himself clearly indicates that he was rendered unconscious by the accident (R. 19). Dr. Berenstein, an interne at the Emergency Hospital, who examined Kicklighter immediately following the accident, testified that he received from him a history that he was unconscious for a short period (R. 42, 44). Dr. Silverman, who examined Kicklighter on May 17, 1937, also received a history that "he was injured in May 1935 when an air hose hit him on the head and knocked him unconscious for a couple of hours * * *" (R. 52). Moreover, Dr. Gillis testified that even if Kicklighter was not rendered unconscious by the accident the injury he sustained was sufficient to cause his disability, saying that "Sometimes a trivial injury could cause very serious symptoms" (R. 104), and the testimony of Dr. Stout, appellant's own witness, was to the same effect (R. 139).

The evidence does not support the argument of appellant that Kicklighter is a malingerer. Dr. Gillis testified that he did not think "that there is any sign of malingering here" (R. 99). Appellant's argument on this point appears to be predi-

cated upon the testimony of one Harry B. Daniel (R. 233), a barber of Henderson, North Carolina, who testified on behalf of appellant that he served in the Army with Kicklighter, and that he (Kicklighter) was frequently on sick leave (R. 234), and the hearsay evidence by Daniel, to which timely objection was made, that "they said he used some kind of soap to make a temperature" (R. 235). This evidence by Daniel is contrary to that of Ralph P. Windham, narrated above, who also served in the Army with Kicklighter as his immediate superior, and who testified, in substance, that his Army services were satisfactory, in fact that he won promotion therein (R. 211). There is nothing in the Army medical records to indicate that Kicklighter feigned sickness while serving therein (R. 188, 189).

The lower court properly held that Kicklighter's claim for compensation was timely filed within one year after the injury, within the meaning of section 13 (a) of the Compensation Law

The further question raised by the appellant in this case is whether the employee, Raymond W. Kicklighter, filed his claim for compensation "within one year after the injury" within the meaning of section 13 (a), quoted above. While the evidence shows that the accident occurred on May 24, 1935, his injury did not become compensable until November 1936, when the injury resulted in disability for work for more than seven days. The evidence further shows that Kicklighter was

able to work and was actually working for appellant over a year from the date of the accident. It is elementary that up to that time he had no right to workmen's compensation and his right to compensation had not accrued and indeed would not accrue until he became disabled. In other words, an injury without disability is not a compensable injury, and the injury referred to in section 13 (a), *supra*, can mean no other kind of injury except compensable injury. The workman is not entitled to make a claim for compensation for mere injury, but his claim must be for accidental injury resulting in compensable disability for work. It is true that Kicklighter was disabled for a week immediately following the accident, but under section 6 (a), quoted above, *he was not entitled to compensation for this period and there was no necessity for him to file a claim at that time.* The evidence shows and the deputy commissioner found that Kicklighter first became disabled November 16, 1936. He had no cause of action prior to that time under the compensation law. His cause of action was in the process of development, but without knowledge of this fact on his part, or means of knowledge until he was advised by medical specialists in March or May 1937.

The fact that Kicklighter was suffering from a *brain injury* and that his condition resulted from the accident suffered by him on May 24, 1935, was apparently first discovered by Dr. Silverman, who examined Kicklighter on March 17, 1937. Dr. Sil-

verman's examination on that date revealed the fact that Kicklighter had sustained *brain injury* due to the accident of May 24, 1935. Dr. Silverman's diagnosis was confirmed by Dr. Spear, who testified that his examination of the employee on February 19, 1938, including X-rays of the brain, *showed a very definite wasting of the brain substance*, and that in his opinion Kicklighter's condition was the direct result of the injury he sustained (R. 70, 71). Prior to the examination by Dr. Silverman neither the employee nor his employer knew that Kicklighter's condition was the result of the accident he sustained.

Under the clear weight of authority the statute of limitations in compensation cases does not begin to run from the date of the accident but rather from the date the employee suffers compensable disability as the result of the accident, and has knowledge that compensable disability has resulted from the accident. This rule of law was sustained recently in the Federal Courts, and we turn to them as our best authority on the subject.

The case of *Di Giorgio Fruit Corporation et al. v. Norton, deputy commissioner, et al.*, 93 F (2d) 119, which arose under the Longshoremen's Act, was decided by the United States Circuit Court of Appeals for the Third Circuit on September 27, 1937, and is directly in point. On *July 25, 1932*, the claimant in that case, Andrew H. Henson, suffered contusions and lacerations of the globe of his left eye by being struck by the stalk of a bunch of

bananas which fell upon him while he was unloading a steamship. Henson, as was Kicklighter in the present case, was disabled as a result of the accident for about a week. At the end of this time he continued his work as a longshoreman until the month of May 1933 when he was confined to prison for 18 months. While he was in prison the injured eye pained him, and he was treated by the prison authorities. It was not, however, until August 11, 1936, *more than four years after the accident*, that Henson filed a claim under the Longshoremen's Act for compensation for permanent disability resulting from the loss of the sight of his eye. It was contended in the *Henson* case, as in the present case, that the phrase "within one year after the injury" in section 13 (a) of the Longshoremen's Act bars any claim not filed within one year of the date of the accident. The Court refused to sustain such a contention and held that the claim was timely filed. The Court said in part that:

As might be expected, the state courts differ in their precise treatment of this question. Some decisions treat the period of limitation of time in which the claim must be filed as running from the date upon which the injury culminates; some from the date upon which the injury becomes apparent. Other decisions hold the period of limitation runs from the date upon which the injury becomes compensable. Though there is this divergence in terms used, nonetheless there is a unanimity of idea to be expressed,

namely, *that the employee's claim is not barred until one year from the time in which the injury has reached a definite culminating stage and one which, being reasonably apparent, is therefore compensable.* Decisions of the state courts with such rulings are *Case of Brown*, 228 Mass. 31, 116 N. E. 897; *Hornbrook-Price Co. v. Stewart*, 66 Ind. App. 400, 118 N. E. 315; *Johanson v. Union Stock Yards Co.*, 99 Neb. 328, 156 N. W. 511; *Simon v. Cathroe Co.*, 101 Neb. 211, 162 N. W. 633; *Esposito v. Marlin-Rockwell Corp.*, 96 Conn. 414, 418, 114 A. 92; *Hines v. Norwalk-Lock Co.*, 100 Conn. 533, 540, 124 A. 17; *Fee v. Department of Labor*, 151 Wash. 337, 275 P. 741; *Guderian v. Sterling Sugar & Railway Co.*, 151 La. 59, 91 S. 546.

* * * * *

The weight of authority of the state courts is clearly against the contentions of the appellants. [Italics supplied.]

The Court, after reviewing the case of *George Kropp v. Parker*, deputy commissioner, 8 F. Supp. 290, which also arose under the Longshoremen's Act, said:

We cite Judge Chesnut's opinion with approval and concur in it. The act must be liberally construed.

The case of *Kropp v. Parker*, *supra*, which also appears to be directly in point, was decided by Judge W. Calvin Chesnut of the United States District Court for the District of Maryland on September 29, 1934. In that case, as in the present

case, the employee suffered a *latent brain injury*. The accident occurred on March 25, 1932, was reported to the employer on the same date, and the employee was given first-aid treatment. He, however, *lost no time from work by reason of the accident until June 3, 1933*. Neither the employee nor the employer was aware of the latent brain injury caused by the accident and the discomfort occasioned thereby to the employee was not sufficient to prevent his working continuously *until more than a year after the occurrence of the accident*. He did not become disabled to an extent entitling him to compensation payments until June 3, 1933, and his claim for compensation was not filed until June 22, 1933, more than a year after the accident. The Court held that the claim was timely filed.

Judge Chesnut in his excellent opinion in that case said:

In the absence of any direct federal decisions it is natural to turn to state court decisions under similar provisions in Workmen's Compensation Laws. The federal statute is modeled upon the New York law (*Wheeling Corrugating Co. v. McManigal*, 41 F. (2d) 593, 595, C. C. A. 4), which as enacted in 1914 used the word "injury" in its similar limitation section (Laws, 1914, C. 41, sec. 28) but in 1918 the act was amended and the word "accident" substituted for "injury" (Laws, 1918, C. 634, sec. 4). I have not noticed any reported decision construing the New York Act as originally worded in

this respect. But in other states, under statutes, *similarly worded*, the great majority of the decisions interpret and apply the word "injury" in the sense of "compensable injury," and therefore in numerous cases involving facts substantially similar to those here existing, it has been held the claim was not barred by the statute. It has been held in Connecticut, Minnesota, Louisiana, Washington, Nebraska, Indiana, and Arizona. The contrary has been held in Michigan and North Dakota.

The Court, after citing numerous authorities, concluded that:

In the absence of any legislative history to the contrary, it seems reasonable to conclude that Congress in adopting the particular wording of the section intended that it should be construed *in accordance with this great weight of authority in state courts*. It is also clear that the act should be liberally construed. *DeWald v. B. & O. R. R. Co.*, 71 F. (2d) 810 (C. C. A. 4, June 11, 1934); *Rothschild & Co. v. Marshall*, 44 F. (2d) 546 (C. C. A. 9). [Italics supplied.]

The same rule of law was applied by the District Court of the United States for the District of Columbia in the case of *Commercial Casualty Insurance Company v. Hoage, deputy commissioner*. Equity No. 57926, the so-called Harry P. Lutz case. In that case Lutz was employed as a painter between August 19, 1932, and May 14, 1934, and came in contact with lead paint continuously during his

employment. In April 1933 the employee found that there was something wrong with his wrist. He consulted a physician, who informed him that there was nothing wrong with it. The physician taped the wrist up and directed him to return to work, which he did. He continued to work until June 2, 1933, when his condition became disabling. On June 15, 1933, there was a tentative diagnosis of lead poisoning and this diagnosis was made positive on July 14, 1933. The employee's claim for compensation was filed on June 13, 1934, more than a year after the injury became disabling, but within one year from the date the employee's condition was *diagnosed as lead poisoning*. The Court in that case held that the claim was timely filed. In a memorandum opinion by Mr. Justice Adkins, filed January 29, 1935, it was said that:

While there is some conflict in the authorities, I think the reasonable construction of the statute is that the claim before the commission is filed in time *if it is filed within one year after the employee had knowledge that compensable disability had resulted*. He did not have this knowledge until his case was diagnosed as lead poisoning.

See *White v. La. Western R. Co.* (La.) 135 So. 255; *Astuton v. Ray Gould Co.* (Neb.) 242 N. W. 357; *Montgomery v. Milldale Farm Co.*, 124 Neb. 347; *Selder v. Cornhusker Oil Co.*, 111 Neb. 300. [Italics supplied.] (The Court also cites *Kropp v. Parker*, *supra*.)

Counsel for appellant attempt to distinguish the Lutz case on the ground that it involved an occupational disease. We concede that this case is distinguishable on the facts, but submit that the *principle of law* applied by Mr. Justice Adkins is applicable to and should be regarded as controlling in the present case.

In *Esposito v. Marlin-Rockwell Corp.*, 96 Conn. 414, 114 A. 92, the plaintiff on an undetermined date between March 3, 1919, and May 6, 1919, received an injury in the course of his employment by a sudden strain which gave rise to a hernia. He immediately notified his employer, but continued to work until January 10, 1920, when he was obliged to cease work. No written notice of a claim for compensation was ever given, but the compensation commissioner, on April 17, 1920, assigned a hearing for May 3, 1920. The defendants claimed that no compensation should be awarded, since neither written notice nor assignment for hearing had been made within one year from the date of the injury, as required by the statute (Section 5360). In holding that the term "date of injury" in this section referred not to the date of the accident or occurrence which injured the employee but to the date when the injury became compensable and hence a subject of a claim for compensation, the Court said:

Our statutes provide that a claim for compensation does not arise until after the in-

capacity of the employee for a period of more than seven days from earning full wages at his customary employment, compensation to begin at the expiration of the first seven days of incapacity. *Until such period of incapacity has passed, no enforceable claim for compensation has accrued, and no claim for compensation could be made.*

Therefore, when Sec. 5360 provides that a written notice of a claim for compensation must be made within one year from the *date of the injury*, the claim spoken of must be a *compensable claim* under Sec. 5348, as there is no other kind of a claim for compensation referred to in the Compensation Act.

There is no provision in the Act for filing a claim for compensation for compensable results of an accident or occurrence which the employee believes may arise in the future. Until the seven days of incapacity have occurred there is no "claim for compensation."

A compensable injury is an injury for which compensation is payable, and the date of such an injury is not the time of the accident or occurrence causing injury, but the time under Sec. 5348 when the right to compensation accrues. [Italics supplied.]

In *Johansen v. Union Stockyards Co.*, 99 Neb. 328, 156 N. W. 511, the Court, referring to the stat-

utory definition of the words "accident" and "injury," held that—

When an accident to an eye which at first appears not serious, results, after a week or more, in a diseased condition of the eye which destroys the sight, the "injury" occurred, within the meaning of the statute, *when the diseased condition culminated.* [Italics supplied.]

In *Simon v. Cathroe Co.*, 101 Neb. 211, 162 N. W. 633, the Court said:

The injury seemed slight at the time, and the existence of the blood clot was not suspected or known until he had visited the surgeon. The rule announced in *Johansen v. Union Stockyards Co.*, 99 Neb. 328, 156 N. W. 511, is that in a case of an injury which at first seems slight, but afterwards develops graver symptoms, the injury occurs when the diseased condition culminates. The finding of the district court that the claim was filed in time is supported by sufficient evidence.

In *Stolp v. Department of Labor and Industries*, 138 Wash. 685, 245 P. 20, the Court said:

Cases from jurisdictions where the statute used the word "accident" as fixing the time within which the application or claim shall be made are not in point. The question in the case now before us is not when the acci-

dent or the fortuitous event happened but when the injury occurred. *It seems to us that the reasonable and proper construction of the Act of this state is that the employee has one year within which to file a claim after the injury has developed which was the result of the fortuitous event.* [Italics supplied.]

Louisiana also has followed the weight of authority. In *Guderian v. Sterling Sugar & Railway Co.*, 151 La. 59, 91 So. 546, the claimant lost an eye, and it was contended that his claim was barred because not filed within one year from the date of the accident. The Court said that:

Undoubtedly, the blow injured the optic nerve at the time it was given, but plaintiff did not know that, and had no means of ascertaining it. * * * He had no cause of action at that time under the Employers' Liability Act. His cause of action was in the process of development, but without knowledge of this fact on his part, or means of knowledge.

* * * * *

Plaintiff's cause of action did not arise until he lost his eye. It is self-evident that one cannot sue until his cause of action arises.

See also:

Bergeron's case, 243 Mass. 366, 137 N. E. 739;

Brown's case, 228 Mass. 31, 116 N. E. 897;

Hornbrook-Price Co. v. Stewart, 66 Ind. App. 400, 118 N. E. 315;

McKenna case, 117 Me. 179, 103 Atl. 69;
Clausen v. Minnesota Steel Co., 242 N. W.
 397, 186 Minn. 80;
Hines v. Norwalk Lock Co., 100 Conn. 533,
 124 A. 17.

AUTHORITIES RELIED UPON BY APPELLANT

On pages 5 to 9 of appellant's brief a number of authorities are cited to support the contention that the limitation in section 13 (a) of the compensation law is jurisdictional and mandatory. In this connection we concede that said limitation is mandatory in proper cases, particularly cases not involving latent injuries, and it does not therefore appear to be necessary to answer the argument of appellant on this point.

Under point II, pages 9 to 17 of appellant's brief, cases are cited to support the argument that the limitation in section 13 (a) of the compensation law begins to run in all cases from the date of the accident. We submit that the array of authorities cited above by appellees on this point clearly shows that appellant's argument is without merit.

Hustus' case, 123 Me. 428, 123 A. 514, cited on page 12 of appellant's brief, appears to support the contentions of appellees and not those of the appellant. The Court in this case held that the date that incapacity begins is the date upon which the workman becomes entitled to compensation and that the limitation for filing claim for compensation begins to run from that date and not from the date

of the accident. The Court cited with approval the leading Connecticut case of *Esposito v. Marlin-Rockwell Corp.*, *supra*, and said in part that:

The workman is entitled to make a claim for compensation not for mere injury, but for accidental injury resulting in loss of earning power.

* * * * *

When the workman's wages, earnings or salary are lost or reduced by reason of an industrial accident, he becomes in theory of law incapacitated. Then he is entitled to compensation. *Then the year given for making claim begins to run.* [Italics supplied.]

The case of *Cooke v. Holland Furniture Co.*, 200 Mich. 192, 166 N. W. 1013, cited on page 12 of appellant's brief, is distinguishable on the ground that the language of the Michigan statute at the time the *Cooke* case was decided was different from that of the local compensation law, section 15 of the Michigan law at that time requiring notice of injury and claim for compensation to be filed within certain periods after the *happening* or *occurrence* of the injury. It is also significant that the State legislature was not slow in relieving against the effects of the decision in the *Cooke* case, it having amended the law the following year by providing, among other things, that claim for compensation "may be made within three months after the actual injury, disability or incapacity develops or makes itself apparent to the injured employee * * *."

See discussion relative to this amendment and prior Michigan decisions in *White v. Morgan & Wright*, 217 Mich. 499, 187 N. W. 257, decided March 30, 1922, wherein the Court referring to the *Cooke* case and other cases said that it "was constrained to hold that the statute commenced to run with the happening of the accident," which is almost an apology for having to take such a narrow view of the law.

The Supreme Court of Minnesota reviewed the leading cases, including the *Cooke* case, in *Clausen v. Minnesota Steel Co.*, 186 Minn. 80, 242 N. W. 397 (1932). The Minnesota court in that case held that where an employee sustained a latent accidental injury to the physical structure of the body, the time for giving notice of injury commences from the occurrence of disability or at the time disability becomes apparent. The Court said that—

It is common knowledge that accidents may injure some parts of the physical structure of the body not open to view nor suspected of having received an injury, nor causing disability until long after the accident. *The injury is there, but latent and hidden.* There are accidents so trivial in apparent results at the time that *neither the one who might witness the same nor the victim thereof would anticipate disability therefrom*; yet the subsequent development thereof may cause not only loss of members but life itself. [Italics supplied.]

See particularly the discussion relative to the *Cooke* case in *Stolp v. Department of Labor and Industries, supra*.

The decision in the *Cooke* case is, it is respectfully submitted, clearly contrary to the weight of authority and should not therefore be regarded as controlling.

The old case of *Milwaukee v. Miller*, 154 Wisc. 652, decided in 1913, cited on page 13 of appellant's brief, related to an employee's right to an award for certain medical expenses, and the Court held that such expenses did not come within the term "reasonable expense incurred," and should therefore be deducted from the award. The case apparently has no application whatever to the question involved in the present case.

The case of *Ehrhart v. Industrial Accident Commission*, 172 Cal. 621, cited on page 15 of appellant's brief, involved a claim for compensation for disability resulting from two specific injuries, one of which was not originally considered by the compensation administrator. The principal question involved therein appears to have related to the authority of the Industrial Accident Commission under section 25 (d) of the California workmen's compensation law, which gave the Commission continuing jurisdiction over its orders, etc., to award compensation for the injury which was not investigated or mentioned at the first hearing before said Commission. This case is clearly not controlling

authority on the question presented in the Kicklighter case.

The case of *Hoage, deputy commissioner, v. Employers' Liability Assur. Corporation, Ltd.*, 62 App. D. C. 77, 74 F. (2d) 715, cited on page 15 of appellant's brief, merely held that the "Deputy Commissioner cannot waive requirement that physician report employee's injury and treatment before recovering fee from insurance carrier" under section 7 (a) of the compensation law (33 U. S. C., Sec. 907 (a)). This case did not involve construction of section 13 (a) of the compensation law relating to the filing of a claim for compensation by an employee and is not therefore in point.

Moreover, the decision of this Court in the case of *Indemnity Insurance Company of North America v. Hoage, deputy commissioner*, 61 App. D. C. 173, 58 F. (2d) 1074, relied upon by appellant and cited on page 17 of its brief, was *reversed* by the Supreme Court in an opinion rendered February 6, 1933, 288 U. S. 162.

CONCLUSION

In conclusion, the attention of the Court is invited to the fact that the evidence in this case clearly shows that the injury sustained by Kicklighter was a *latent* brain injury, the nature of which was not known to the employee, and did not become disabling and compensable until long after the accident. Cases, therefore, which do not involve latent or dormant *compensable* injuries should

be regarded as not in point with respect to the question presented. The attention of the Court is particularly invited to the review and discussion of the leading authorities on the question in *Clausen v. Minnesota Steel Co., supra*.

For the foregoing reasons it is respectfully contended that the decision of the lower court was entirely proper and should be affirmed with cost to the appellees.

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